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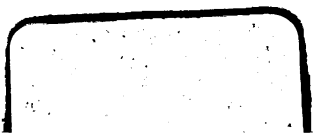

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A

Faithful Regiſter

OF THE

Late Rebellion:

OR, AN

Impartial Account

OF THE

Impeachments, Trials, Attainders, Executions, Speeches, Papers, *&c.* of all who have ſuffered for the Cauſe of the Pretender in *Great Britain.*

In which is Contained,

Several curious Pieces never yet Printed.

L O N D O N,

Printed for *T. Warner,* at the *Black Boy* in *Paternoſter-Row,* 1718. Where may be had the Reverend Mr. *Patten's* Hiſtory of the Rebellion.

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THE PREFACE.

THERE have been executed for this Rebellion, and the Conſpiracy which led to it, to the Number of 48 Perſons; a few in Compariſon of the Greatneſs of the Undertaking, and the Neceſſity of making Examples in Caſes ſo extraordinary. Thoſe who have otherwiſe ſuffered, for, or upon Account of it, are more numerous; ſuch I mean as were engaged, or ſuſpected of being engaged in it; for if I ſhould apply the Word SUFFERING in general, God only knows how conſiderable the Number, as well as the Circumſtances, would appear; but in the Courſe of this Hiſtory, there is, however, ſuch a

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Light into it, as will give ſufficient Satiſfaction to the Reader.

As there is always a prevailing Curioſity in the Nature of Mankind, to obſerve and peruſe the Sentiments of dying Men, or what has Relation to their Sufferings; ſo few Subjects ever anſwer the Labour of the Hiſtorian better, there being many of this Nature extant. Theſe were the Thoughts which prevailed with me to collect the following Treatiſe, and to call it a Regiſter, *or ſhort Hiſtory of all who ſuffered for, or on Account of the late Rebellion in* Great Britain, *&c. I have avoided all Partiality and Reflections, ſo that it might the better prove acceptable to all Parties, and remain a laſting Monument of the ſad and dreadful Conſequences of ſo fatal, and long to be lamented, an Undertaking.*

The Reader is deſired to excuſe ſome little Errors in the proper Writing of the Scotch *Names, which being deliver'd to thoſe employ'd by the King, by Pronunciation only, it will be thought the more excuſable if they are not ſo duly ſpelt.*

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A

REGISTER

OF THE

Late Rebellion.

THE Hiſtory of the Rebellion, being the Subject of another Treatiſe, I ſhall only here obſerve, that the ſame breaking out in *Scotland* under the Earl of *Mar*, who, on the *6th* of *September*, 1715. ſet up the *Pretender's* Standard, and caus'd him to be proclaim'd at *Brae-Mar*, and other Places: It was confidently expected, that a general Riſing in *England* would have enſu'd; and no doubt but a Conſpiracy to that End had been carried on. But the Government, it ſeems, came pret-

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ty early to the Knowledge of it, and prevented the main Design: This Discovery broke out before the News of the Rebels being actually in Arms in *Scotland*; for on the 2*d* of *September*, Lieutenant Colonel *Paul*, who had the Command of a Company in the first Regiment of Foot Guards, was seiz'd, and the next Day committed Prisoner to the *Gate-House*, being charg'd with conniving at the inlisting Men for the Service of the *Pretender*, &c. (of whom, and others hereafter mention'd to be secur'd, or taken up, more will be said in particular in another Place.) Two Days after, the Lord *Powys*, a Papist, was also taken into Custody of one of his Majesty's Messengers, and soon after committed to the Tower: Not long after, the Lord *Lansdowne*, the Lord Viscount *Dupplin*, and Earl of *Jersey*, were also apprehended, and the two former soon after committed to the Tower; as was likewise the Earl of *Scarsdale*.

At the same Time, a Message was sent to the Commons by Mr. Secretary *Stanhope*, signifying, that his Majesty had just Cause to suspect, that Sir *William Wyndham*, Sir *John Packington*, *Edward Harvey*, Sen. *Thomas Forster*, Jun. *John Anstis*, and *Corbet Kynaston*, Esqrs; were engaged in a Design to support the intended Invasion; and therefore had given Orders for apprehending of them; to which he desir'd the Consent of the House, who very readily consented; whereupon Warrants were presently issu'd, and Mr. *Harvey* and Mr. *Anstis* were secur'd the Day following.

Messengers were at the same Time dispatch'd to the *Bath*, to seize disaffected Persons; for by the Discovery it was found, that that was the

the chief Place of Rendezvous for the Conſpirators; and that *Briſtol*, *Oxford*, and that Place, were to be ſecur'd for the *Pretender*. A Colonel of the Guards was ſent down with a Meſſenger, to Sir *William Wyndham*'s Houſe in the Country, to apprehend him; which they did, but he eſcap'd from them; however, upon the iſſuing a Proclamation, he ſurrender'd himſelf; Sir *John Packington* was alſo ſeiz'd, and brought to Town a Priſoner. All this while the Government were active in ſearching after Horſes, Arms, *&c.* and ſecuring ſuſpected Perſons; and there were ſeiz'd, by the Vigilance of the Lieutenancy of *Middleſex*, above 800 Papiſts, Nonjurors, and other diſaffected Perſons, who, upon Examination, committed ſuch as were moſt criminal to the ſeveral Priſons of *Newgate*, the *Gatehouſe*, *New-Priſon*, and either diſcharg'd, or admitted others to Bail.

There were ſeiz'd at *Oxford*, and brought Priſoners to *London*, Captain *Halſtead*, Mr. *Spelman*, Mr. *Wilſon*, Mr. *Kelley*, Mr. *Burke*, Mr. *Lloyd*, *Thomas Dalſgrove*, *John Clarke*, *Thomas Todd*, and *William Hughes*. And there and at *Wickham* were ſeiz'd Captain *Gordon*, another of theſe Conſpirators, with *Darrel*, and Captain *Kerr*.

At the *Bath*, Colonel *Lanſdowne*, Captain *Doyle*, Captain *Sinclaire*, Sir *George Brown*, Mr. *Maccartney*, Mr. *Dun*, Mr. *M' Donel*, *William Hibbort*. At *Briſtol* ſome, and at St. *Colomb* in *Cornwal* ſome, who had adventur'd to proclaim the *Pretender* there. Here was likewiſe ſeiz'd 11 Cheſts of Fire-Arms, a Hogſhead of Basket-Hilted Swords, and another of Cartouches, and three Pieces of Cannon, and one

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Mortar, which had been buried in the Ground. A Design was likewise discover'd of seizing *Plymouth*; on which Account Sir *Richard Vivian*, and others, were seiz'd, and held in Custody.

Whilst these things were doing in the *West*, those in the *North* had their Eyes more about them; and though Warrants were sent down to seize many, yet they found only the Lord Viscount *Dunbar*, and Sir *Marmaduke Constable*, two Popish Gentlemen of those Parts; the Lords *Derwentwater*, *Widdrington*, Mr. *Forster*, and others, keeping out of their Way, till their Design of Rising was brought to a Head. These, on the *6th* of *October*, assembled between *Alnwick* and *Warkworth*, at a Place call'd *Plain-field*, to the Number of about 300, and attempted to seize *New Castle*, but were prevented; of whose Transactions, after their joining the *Scots*, and their March to *Preston*, being not essential to this Work, I shall return, and speak of those who suffer'd for, or on Account of the Rebellion, or the Conspiracy which led to it; and first of such as suffered Death.

An Account of the Executions of Joseph Sullivane, Felix Hara, *and* Robert Whitty, *for High Treason; with their Trials and Behaviour*, &c.

THE first Light which can be said publickly to be given of the Knowledge of the Conspiracy, was the Discovery of some Persons, who had been listed for the *Pretender's* Service, which was done by others who were privy to the Matter, and gave Information to the Government; particularly, against *Joseph Sullivane*, alias *Silver*, a Corporal, or Serjeant in Colonel *Paul's*

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Paul's Company; he was apprehended by one of his Majesty's Messengers on the 31*st* of *August*, who found about him a Furloe, sign'd by the said Colonel, which he would very willingly have stifled, or made away with; and this is probable the Cause which occasion'd the Colonel's Misfortune, in being apprehended, and lying under the Censure of the Government, and of Mankind. About the same Time, *Felix Hara* and *Robert Whitty* were likewise seiz'd, and all three soon after committed to *Newgate*.

The former of these was a likely young Man, about 29 Years of Age, a Papist, as he profest himself, and born in *Ireland*: He had been nine Years a Soldier during the Reign of Queen *Anne*, in the Royal Regiment of Marines; and when that Regiment was broke after the Peace, he went to *France*, and took Service in the *Irish* Regiment of Foot, commanded by Lieutenant General *Dorrington*, in the *French* Service; but did not serve there above six Months before he came again to *England*, and listed himself under Colonel *Paul*. On the 20*th* of *October* following, he was brought to his Trial at the *Old Baily*.

He was indicted for levying War against the King and Government; and the Indictment set forth, that on the 30*th* of *August*, the Day before he was apprehended, he had listed *Robert Whitty* and *Felix Hara*, with others, of which the Witnesses against him were some for the Service of the *Pretender*, whom he called, King *James* III. One of these, nam'd *Feland*, declar'd, that he had been with him at *Calais* about half a Year before, where he was raising Recruits for *Dorrington*'s Regiment, as he said

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then, for King *James*'s Service; that he met him after, about the Month of *July* before in the *Mews*, where *Sullivane* again told him, he was raising Men on the same Account, some of which he had sent to *Dover*, where they were out of the Reach of the Government; and advis'd the Evidence, *Feland*, to list in Colonel *Paul*'s Company, of which, he said, he himself then was, where he might be protected from his Creditors, and they might together the better carry on the said Service, as he told the Evidence he did, by the Connivance of his Colonel, who had given him a Furloe for 14 Days for the said Purpose; and that, to conceal his Designs the better, he appear'd sometimes as a Barber, and sometimes a Saylor; and added, that the said Colonel would excuse him from doing Duty: That he had, after several Meetings with the said *Sullivane* upon that Occasion, where there were several other Persons, whom he saw *Sullivane* list; particularly *Whitty* and *Hara*; the Manner of doing it was this: A Bible, on some Pretence, was call'd for, and being shut up privately, *Sullivane* first laid his Hand upon the Bible, and swore to be true to King *James* the Third, *&c.* then the same Oath was administer'd to those he listed; which, when done, he gave them each Half-a-Crown, and promis'd them Twelve Pence a Day Subsistence, besides Assurances of Preferment when their King came over. He told them at these Meetings, that he had listed many more; and that there were about 30000 Men ready at the Command of the Duke of *Ormond*, and for the Service of King *James*, who was to land in *England*, whilst others were to take up Arms at the same Time in *Scotland*:

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land: That Colonel *Paul* was to command a Regiment under the *Pretender*, and he himſelf was to be a Major: That King *George* would be forc'd to fly to *Hanover*, if he was not knock'd on the Head before by King *James*'s Friends; who, he ſaid, would be here by *Chriſtmas*; that there were Lords, who were his (*viz. Sullivane*'s) Friends, and they need not fear being provided for. This was poſitively ſworn againſt him by other Witneſſes, and he was found Guilty.

Robert Whitty, and *Felix Hara*, were try'd upon one Indictment, which ſet forth their being liſted in the Manner and Form aforeſaid, and ſworn to by the ſame Evidence: Againſt which they had very little to offer; and were likewiſe found guilty of High Treaſon, and all together receiv'd Sentence of Death.

Their Behaviour and Execution.

FOR a good Part of the Time after their Condemnation, they perſiſted to deny the Crime which had been ſworn againſt them; but this at length they own'd, at leaſt in great Part, to be true; yet were obſtinate in juſtifying themſelves therein; more particularly, *Sullivane* and *Harra:* As for *Whitey*, he was a weak Man, and ſometimes ſhew'd Remorſe, having Hopes of being ſav'd, and profeſs'd himſelf a Proteſtant of the HIGH CHURCH; but theſe Hopes failing him, when he came to die, he, as well as the other two, openly declar'd himſelf a Papiſt.

They made no Confeſſion, nor could be brought to any, and appear'd very reſolute at their Deaths. *Sullivane*, at the Place of Execu-

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tion, did the Justice to Colonel *Paul*, as to free him from the Imputation of being privy to his Crime: The Contents of what he said, being sum'd up in the following Paper, which he had the Night before read publickly in the Chapel at *Newgate*.

A COPY of Joseph Silver's *Paper before-mentioned.*

'I *Joseph Sullivane*, alias *Silver*, being now under the Sentence of Death; and having no other View or Consideration at present, but to discharge my Conscience, do hereby solemnly declare, in the Presence of GOD, that Colonel *Joshua Paul*, of the first Regiment of Foot-Guards, is not in any Respect guilty of acting for the *Pretender*'s Service, (to my Knowledge) or ever employ'd me to that End. And I do further declare, in the Presence of GOD, and to all Mankind, that the Furlow found on me, when I was apprehended in St. *Martin*'s Parish *in the Fields*, and sign'd *Joshua Paul*, was not sign'd by the said Colonel *Paul*, or with his Privity or Consent, directly or indirectly. Given under my Hand at *Newgate*, this 27*th* of *October*, 1715.

Joseph Silver, alias *Sullivane*.

The next Day after their Executions, *Sullivane*'s Head was affix'd upon *Temple-Bar*; but his Quarters, and the Heads and Quarters of the others, were allowed to be buried.

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An Account of Captain Gordon, *Captain* Kerr, *and* John Darrell, *who were executed for High Treason on the* 7th *of December*, 1715.

THESE three Persons were appehended, as has been said, concerning the *Oxford* Conspiracy; and after Examination, committed to *Newgate*; *Gordon* on the 12*th* of *October*, and *Kerr* and *Darrell* some time after.

On the 22*d* of *November* following, *Darrell* was brought to his Trial at the *King's-Bench-Bar* at *Westminster*, and the other two the Day following. The Indictment against them set forth in general, that they had attempted to levy War, in order to depose and murder his Majesty, and to enthrone the *Pretender*. The Evidence against them, consisted of such Persons as had been privy with them to the Conspiracy, who swore very fully and positively against them; these were one *Bethel*, one *Mayo*, and *Adams* a Cook in *Shoe-Lane*; at whose House several of their Consultations were held; who depos'd, that at several Meetings there, as well as at the *Royal-Oak*, they had been in Company with the Prisoner, and some others, where they discours'd of a Rising at *Oxford* in Favour of the *Pretender*, who was called King *James* III. whose Standard was to be set up first at the *Bath*, the next Day at *Oxford*, and after at several other Places; that several Persons were ready at the latter Place to favour this Rising; and that they were to be join'd by a great Number of the Scholars, 10000 were mentioned, as well as by a great many of the Inhabitants; 300, who were to be headed by Colonel *Owen*, and another Per-

son,

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ſon, who were firſt to ſecure *Oxford*, to ſeize ſuch noted Perſons there, as were in the Intereſt of King *George*, and then proclaim the *Pretender* for King. That in Purſuance of this, after many of theſe Conſultations, the Priſoners, eſpecially *Darrell* and *Gordon*, did go out of *London* toward *Oxford*, to wait the Reſult of theſe Deſigns; that they went as far as *Wheatly*, which is about twelve Miles from *Oxford*, where they ſtaid, under Pretence of going a Fiſhing, till they heard that Major General *Pepper* was come to *Oxford*, and had ſeiz'd many of the Conſpirators; that then they left *Wheatly*, and went to *Wickham*, where they were ſeiz'd; that at one of their Meetings at the *Globe* (viz. *Adams*'s) in *Shoe-Lane*, they drew their Swords, and laying them a-croſs, ſwore themſelves to Secrecy; that at another Meeting, one *Oliverſon*, a Servant to Mr. *Cholmondley* in the Temple, brought 10 *l.* which was paid to *Darrel*, who diſtributed ſome Part to ſome Perſons, who were to be at the Riſing at *Oxford*, to bear their Charges thither. Theſe Gentlemen, by their Council, alledged, that they were ignorant of any Conſpiracy to dethrone, or murder the King, as the Indictment ſet forth; that they were not at *Oxford*, nor acquainted with any Circumſtances of a Riſing there, nor had they ever declar'd their Intention or Aſſent to ſuch an Undertaking. 'Twas own'd, they had been ſometimes at the Places mentioned in the Indictment, but deny'd the Particulars charg'd againſt them; but they offer'd no particular Defence, as to the Overtacts laid in the Indictments; and even thoſe Witneſſes they call'd to prove ſome Circumſtances of their going out of Town upon other

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Occaſions, did, at the ſame time, corroborate what had been ſworn for the King; as to the Times of their being charg'd with that, and other Meetings, they were all found guilty; and a Motion was made by Council for the King, for a Rule of Court to bring them down the laſt Day of the Term, to receive Sentence; which was accordingly done on *Monday*, the 28th of *October*.

An Account of their Characters, Behaviours, &c. being the Subſtance of what was publiſhed the Day after their Executions, by the Ordinary of Newgate; *with a Copy of their Paper left with a Friend.*

THESE three Gentlemen had been Officers in the Army, *viz.* Capt. *Gordon* and *Kerr*, for a conſiderable Time under the two late Reigns, and Mr. *Darrell* of later Years in the ſame Service, for which he left the Employment of a Brewer he was concern'd in. While they lay under this Condemnation, I conſtantly viſited them, ſometimes in the Room they were kept in all together, and at other Times in the Chapel, where I read the Word of God to them, and pray'd with them, endeavouring to diſpoſe 'em to a due Examination of their paſt Lives, and a ſerious Conſideration of their preſent State.

As I was one Time laying before them the Heinouſneſs, and diſmal Conſequences of *Rebellion* and *Civil War*; and how the Authors of it, and Actors in it, were highly guilty before God and Man, they deny'd their being concern'd in any ſuch Thing; but not being ſatisfy'd with this their Anſwer, I adviſ'd them far-

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farther to consider, and bethink themselves, and not aggravate their own Guilt, by denying a Fact they were fairly try'd for, and convicted of; desiring them impartially to search and examine their own Consciences in the Matter, and then speak the Truth, which must needs terminate in the Acknowledgment of their Crime. And herein I endeavour'd to make them sensible of the Misery they had wilfully involv'd themselves in; praying them seriously to consider, whether it had not been better for them to be *Loyal*, than *Rebellious*; and not to have (as they had in this Treason) acted contrary to the Laws both of God and their own Country; for which they were now to suffer, not only in this World a shameful Death, but in that to come (unless they truly repented) an eternal one of Horrour and Misery, as I have hinted before: And therefore I advis'd them now to act wisely in this weighty Matter, by taking due Care of their own Souls, that were in great Hazard of being forfeited and lost for ever, by their Wickedness and Folly.

Upon this, and several other things of the like Nature, which I represented to them, Mr. *Gordon* said: *It had been good for them to have been wiser.* I expected he would have gone on further, and made a fuller Confession; but Mr. *Darrell*, who was close by him, (for I could not at that, nor at any other Time, speak to 'em privately) giving him a Push, he then stopt his Mouth, and said no more. Both this Mr. *Darrell* and Mr. *Kerr*, then made it their Desire to me, (as Mr. *Gordon* also did) that I would not put them upon any thing that requir'd a particular Answer; for they

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they would resolve no Questions, nor confess any Sin, but to God only, saying this: *That in general they had been grievous Sinners, and greatly offended the divine Laws, through the whole Course of their Lives; and that therefore God in his Justice had brought this Calamity upon them for their former Sins, and they submitted to his Providence.*

They outwardly behav'd themselves very civilly and respectfully; but often pretended some Business or other, to excuse their Absence from Prayer, and receiving my Exhortations and Instructions, which (according to the Duty of my Place) I frequently offer'd to them; but they would not fully receive them.

And thus it was with them, who, when they were brought to the Chapel to join in Prayer, and hear the Word of God, which (according to my usual Method) I expounded; they said to me, as the rebellious *Jews* did to the Prophet, *Jer.* xi. 21. *Expound not.* This, it seems, grated upon them, when (as the Text now and then led me) I touch'd on some Points that were not agreeable to their Minds. Neither did they (as I observ'd) join in *all* the Prayers appointed for the Service, which, as a Minister of the Church of *England*, and a Subject of our lawful Sovereign King *George*, I look'd upon my self in Duty bound to perform.

Mr. *Gordon* at first was most unwilling to come to Prayer, and most uneasy at it; yet afterwards he comply'd with it, (seeming to be better satisfy'd) and both himself and the others too at last confess'd, that they were justly condemn'd according to Law; but neither of 'em would plainly own, that this their bloody Design

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ſign was moſt unnatural and heinous; that is, Rebellion.

As I thought it my Duty to preſs them to declare, *Whether they could think it a lawful thing to dethrone King GEORGE*; ſo I put the Queſtion to them, as I had done before to the three Traytors executed at *Tyburn*, the 28*th* of *October* laſt; but neither of them were willing to give an Anſwer to it. Therefore I endeavour'd ſtill to inform their Judgments better, by obſerving to them, 1*ſt*, The Duty of Obedience to *Principalities and Powers*, ſo much recommended in holy Writ; and then, 2*dly*, I laid before them the Laws and Practice both of this, and other Nations herein; but they would not receive any thing of this, ſaying: *It matter'd not what their Thoughts had been, or were; they did not look upon themſelves oblig'd to reveal them.* Thus they evaded the Queſtion, and would give no Anſwer to it.

Upon this I further ſhew'd them, that they ought to give ſome *publick Token* of their Repentance, for the *publick Crime* that had deſervedly brought them to this open Shame; and that ſuch a Repentance they could not expreſs better, than by an ingenuous Acknowledgment, and open Deteſtation and Abhorrence of it; confeſſing before God and Man, that *they had done very fooliſhly and wickedly*; and ſo beg Pardon of the *King of Heaven*, and his *Vicegerent on Earth*; as alſo of all others they had wrong'd, and caus'd ſo much Loſs and Sorrow to.

In this Manner I went on, but (I am afraid) to little Purpoſe; for they told me, *They would not hear me if I harp'd any longer upon this String*; *and what they only deſir'd of me was, my reading*

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reading to them the Prayers and Leſſons appointed for the Day, and no more. By this I plainly ſaw, that their Deſign was, to prevent my giving them thoſe Inſtructions which their woful Caſe, and my Duty to their Souls, requir'd. And hereupon I told them, that as I found them under a ſpiritual Diſeaſe, ſo I would not give over trying what ſpiritual Medicine I could adminiſter to them while they were under my Cure.

Having heard that Captain *Gordon* had formerly committed Murder, I told him of it, and repreſented to him the Heinouſneſs of ſuch a Crime: But he denying it, I ask'd him, whether he did not remember, that ſome Years ſince, having kill'd a Perſon here, he then fled from Juſtice, and went to the *Eaſt-Indies*; where (*viz.* at *Bengall*) he ſtabb'd a Gentleman, and was brought over in Chains into *England* for his Trial; but the Evidence dying by the Way, he eſcap'd for that Time? At this he ſeem'd to be very much ſurpriz'd and diſcountenanc'd, and made a Pauſe; and then ſaid, *He knew nothing of thoſe Matters.* With this Anſwer being not ſatisfy'd, I deſir'd him to ſpeak plainer, that it might be known, *whether he was, or was not Guilty of thoſe Facts.* To which he reply'd, *He was not*; adding, that *he would not deny but that a fair Chance might ſometimes have happen'd*; *but he had made his Peace with GOD.* This is all I could get from him, who could not abſolutely diſown, nor would plainly confeſs his Guilt.

This gave me Occaſion to obſerve, both to him and the reſt, that when Men once abandon themſelves to a wicked Courſe of Life, the Devil

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vil has a mighty Power over them, and is not wanting in his Endeavours to set them forward, and easily prevails with them; bringing them from one Sin, and from one Degree of Sin to another, and so on to greater and more enormous Sins; as it plainly appear'd to be their sad Case. And therefore I entreated them again and again (by the Love of God, and the Concern they ought to have for their immortal Souls) duly to consider all this, and repent, and not suffer themselves to perish in their Iniquities.

At the Place of Execution, I attended them for the last Time, and earnestly exhorted them to make a free Confession, and repent, *&c.* imploring God's Mercy and Grace for their Salvation, through the alone Merits of Christ. They told me, *They had no Confession to make, nor no Pardon to ask, for what they knew was no Sin.*

I pray'd, sung a penitential Psalm, and rehears'd the Apostles Creed. When I was at Prayer for them, beseeching God to forgive all their Sins, particularly the Crime they now suffer'd for; *Kerr* and *Darrell* interrupted me, saying, *They could not join with me in this Petition; for they look'd upon it to be no Crime.* As for *Gordon*, he said nothing then, neither did he join with me in any Prayers at all, nor in the Creed, he being of the *Romish Religion*, and I am afraid his Fellow-sufferers were too much inclin'd that Way.

After this, having recommended their Souls to God, I withdrew, and left them to their private Devotions; for which they had some time allotted them: Then the Cart (into which they

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were removed out of the Sledge at their Arrival) drew away, and they were turn'd off, calling upon God to receive their Souls.

Wedneſ. Dec. 7. 1715.

A Speech intended to have been ſpoken by Mr. John Gordon, *on behalf of himſelf and his Fellow-Sufferers, Lieutenant* John Darrell, *and Captain* William Kerr, *at Tyburn, the Place of their Execution, on* Wedneſday *the* 7th *of* December, 1715. *from a Copy ſubſcribed by them, and left in a Friend's Hand that Morning.*

Good People,

'IT may reaſonably be expected from us, to 'ſay ſomething at this Time, as to the Death 'we are brought hither to ſuffer.

'I confeſs, for my own Part, it is a juſt 'Judgment of the Omnipotent and All-ſeeing 'God, who ſearches the Secrets of all Hearts, 'to permit an unjuſt Death to be executed 'upon me, for the innumerable Sins I have 'wilfully committed againſt his holy Laws: 'God of all Goodneſs, of his infinite Mercy, 'forgive me.

'It is no ſmall Comfort to me, to hope that 'the Juſtice of the Cauſe for which I die, will 'very much mitigate the Reſentment of a 'merciful God; and that the Merits of my 'Saviour Jeſus Chriſt, will expiate for my 'Sins at the Hands of his eternal Father.

'I leave the thinking Part of Mankind to 'judge, whether or no my Fellow-ſufferers and 'ſelf die innocent: Loyalty to our King, and 'Love to our Country, being the only Crime 'laid to our Charge.

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'God, of his infinite Goodneſs, bleſs, pre-
'ſerve and reſtore the one, and render Succeſs
'to the loyal Patriots of the other, worthy
'their honourable Undertaking: Give them,
'O Lord, Hearts, Heads, and Hands, that
'they may overcome the ſubtil Deſigns of
'their Enemies.

'I am not vers'd in the Laws of *England*;
'but if it is become a Faſhion to take away
'Mens Lives upon Suſpicion, it's a Severity
'not often practiſed in other Nations. And
'though, it may be, we are not the firſt that
'ever died in *England* for conſtructive Trea-
'ſon, yet I perſuade my ſelf, that we are the
'firſt within this Century that have fallen un-
'der the Judgment of Treaſon, without hav-
'ing once declared their Intention: Herein my
'Fellow-ſufferers and I fully verify the old
'Saying, *New Kings, new Laws.*

'God of all Kings, and Supreme of all Laws,
'forgive the Judges, ſtand by and aſſiſt the
'Juſt, and preſerve the Innocent from un-
'righteous Sufferings, and deliver this Land
'from guiltleſs Blood and Oppreſſion.

'I thank thoſe two worthy Gentlemen my
'Council, as alſo my Sollicitor, who was not
'wanting in Coſt or Pains to do me Service.

'I eſteem thoſe Fetters, with which (for De-
'riſion) my Legs were at ſeveral times loaded,
'ſince I was taken at *Wickham*, as the greateſt
'Badge of Honour; and I could wiſh my Body
'had Fleſh enough for every Monument in
'*England*, the better to perpetuate my Loy-
'alty.

As

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As to my Fellow-ſufferers.

'Lieutenant *Darrell* went Young into the 'Service of his Country: He ſerv'd with Cou-'rage and Faithfulneſs, and ſignaliz'd himſelf 'in many Engagements during the whole War. 'He did not only act in Perſon, but employ'd 'great Part of his Fortune (particularly in the 'Years 1696 and 97) in the Regiment then 'commanded by Colonel *Columbine*; at which 'time, to prevent Mutinies, he advanced to 'that Regiment 197*l.* 3*s.* 6*d.* Which, to 'this Day, has not been repaid him, notwith-'ſtanding an Order or Vote of the Houſe of 'Commons for the ſame. He begs the Go-'vernment will, in Juſtice and Charity, conſi-'der the Caſe of his Widow.

'He declares, as I have done, that he ap-'prehends our Caſe comes not within the Reach, 'even of the Laws now in Being; no Proof 'having been made, that he ever declared his 'Intent; yet dies in Charity with his greateſt 'Enemies.

'Captain *Kerr*'s Character is ſo well known, 'that it need not be mention'd here; his ma-'ny Wounds, as well as the Loſs of his Blood, 'teſtify his Courage; and his cheerful De-'portment and Reſignation, manifeſt his Loy-'alty.

'We forgive that poor Wretch *Bethell*, and 'wiſh *Miers*, *Adams*, and he, may repent of 'the Injuries done us.

'We forgive all Mankind, and beg Forgive-'neſs of them.

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'And now, O Lord, look down from Heaven 'behold, visit, and relieve us thy Servants; look 'upon us with the Eyes of thy Mercy; send us 'Comfort and sure Confidence in thee; defend 'us from the Danger of the Enemy; and keep us 'in perpetual Peace and Safety, through Jesus 'Christ our Lord. Thou knowest, Lord, the Se-'crets of all Hearts, shut not thy Ears to our 'Prayers; but spare us, Lord most holy, O God 'most mighty, O holy and merciful Saviour, thou 'most worthy Judge eternal, suffer us not at our 'last Hour, for any Pains of Death to fall from 'thee.

Lord Jesus receive our Souls.

John Gordon.
Newgate, Dec. 7. 1715. *John Darrell.*
William Kerr.

These being such as suffer'd for, or on Account of the Conspiracy which led to the Rebellion;

The next Part of this Work is, to speak of those who suffer'd *Death* for being *actually* in Arms: And here I must begin with the Surrender at *Preston*, where the whole Force of the Rebels, unless such as had with Difficulty escap'd from them, after a short Cessation, deliver'd themselves Prisoners to his Majesty's Forces, on *Monday* the 14*th* of *November*, 1715. in Number 1489, being 75 *English* Noblemen and Gentlemen, with 83 Servants, and 305 private Men; 143 *Scots* Noblemen and Gentlemen, their Vassals, Servants, and others, 862. among these were 6 Officers, who had deserted the Service of King *George*, who were the first (four of them) that suffer'd for the Rebellion.

These

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Theſe were Lord *Charles Murray*, a younger Son to the Duke of *Athol*; Captain *Dalziel*, Brother to the Earl of *Carnwath*; *John Nairn*, a Major; *Philip Lockhart*, Captain; *John Shaftoe*, Captain; and *John Nairn*, Enſign.

The four laſt were thoſe who ſuffer'd Death, having, with the other two, been try'd by a Court Martial held at *Preſton*, where, after a very ſhort Trial, they were fully prov'd (*Dalziel* excepted) to have been actually in Pay, in the Service of King *George*, at the Time of engaging in the *Pretender*'s Service. Captain *Dalziel* was acquitted by the Court Martial, he proving that he threw up his Commiſſion, before he took Service among the Rebels: This Gentleman continu'd impriſon'd for ſome Time after; during which, he married a Woman of ſome Fortune, and accepting of Tranſportation, went Abroad with her, where he remains in Baniſhment.

As for Lord *Charles Murray*, though his Death was once reſolved on; yet the Intereſt of his noble Relations, and the particular Services of his Father, Unkle, and Brother, and their Adherence to the King's Cauſe in the grand time of the Rebellion, to which a great deal was owing in the Succeſs of his Majeſty's Affairs in *Scotland*, a Pardon was procur'd for him.

As for the other four, they were ſentenc'd by the ſaid Court Martial, on *Monday* the 28*th* of *November*, and brought to their Executions the 2*d* of *December* following.

They all died without confeſſing any Guilt for being in Arms; owning to the Reverend Divine, who attended them under Sentence of Death, that they had received the Sacrament, taken the Oaths of Abjuration, *&c.* and from

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that very time determin'd to take the firſt Opportunity to fight againſt King *George*: They behav'd themſelves like Gentlemen and Chriſtians, us'd great Decency in their Devotion, were free in acknowledging their Sins to God; but not one of them ſaid any thing at the Place of Execution, but ſeem'd to die with Courage and Reſolution, and as became Men in their Condition.

The firſt of them was *Philip Lockhart*, Brother to *George Lockhart* of *Carnwath*, who wrote the *Memoirs of the Affairs of* Scotland, both Sons of Sir *George Lockhart*, Knt. Lord Advocate to King *Charles* and King *James* II. who was ſhot in a Quarrel by one *Chiſley* of *Derey*, in *Scotland*.

This *Philip Lockhart* had ſerv'd in the Regiment of Lord *Mark Kerr*, and behav'd well on all Occaſions; as he did with ſingular Goodneſs and Reſignation under Sentence of Death: He was a very perſonable Man, and but young in Years; commanded a Troop of Horſe in the Rebellion, and gave great Demonſtration of his Courage in the Attack at *Preſton*.

Major *John Nairn*, was likewiſe of *Scottiſh* Extraction, being Son to *Baily Nairn*, and born at *Leith* near *Edinburgh*: He was eſteemed an experienced Officer, having ſerv'd long in the Wars Abroad. He ſhew'd a great deal of Conduct, both in diſciplining the Rebels on their March, and in managing the Attacks at *Preſton*, and was by many thought the beſt Soldier among them. When the King's Forces approached, he gave his Vote for drawing out, and fighting them in the open Field.

The

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The third was Captain *John Shaftoe*, Son of *John Shaftoe* of *Fenwick-Hall*, in the County of *Northumberland*, whom he brought into the Rebellion with him, and whoſe Caſe was much to be pitied, being a Man very far advanc'd in Years: He was taken among the reſt of the Rebels at *Preſton*, and brought Priſoner to *Newgate*; but afterwards remov'd to the *Savoy*, being made uſe of as an Evidence. The ſmall Eſtate of the Family having been near run out, this Captain *Shaftoe* ſerv'd ſeveral Years as a private Gentleman, in the Regiment of *Light-Horſe*, commanded by General *Lumley*; became afterwards an Officer in the Regiment of Foot, of Lord *Paſton* in *Spain*, and ſerv'd alſo in that of Brigadier *Frank*. He had the Command of that Troop among the Rebels, call'd Lord *Derwentwater*'s Troop, and appeared an active and experienced Officer; which Sphere, 'tis probable, he the rather ſhone in, in regard there was ſo great a Want of ſuch in the Army of the Rebels. He is generally ſaid to have been privy to the Meaſures concerted at *London* by *Ormond*, *Mar*, and others, and with Mr. *John Hunter*, and Mr. *Robert Talbot*, two others of thoſe taken, took ſhipping at *London*, and came to *Newcaſtle*, and was indefatigable in making Intereſt, and concerting Meaſures with the *Northumberland* Gentlemen. The Night before the King's Troops advanced to *Preſton*, he liſted 70 Men as Foot Soldiers; for till then the Rebels never had entertain'd Foot; and 'was thought, on compleating a Regiment, he was to have been made Colonel of it. At the Approach of the King's Troops toward *Preſton*, juſt before the Action, he ſeem'd ſomewhat concern'd; yet he ap-

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pear'd at the Barrier with Courage enough, tho' it might be perceiv'd, that he was touch'd with the Guilt and Danger of Desertion. He was very penitent, when he was sensible that he must die, and behav'd well under Execution.

Ensign *John Nairne*; he was at the Time of engaging in the Rebellion, actually in that Post in *Preston*'s Regiment of Foot, which fought against the Rebels at *Preston*. He claimed Relation with the Earl of *Mar*, though there were not much in that, except the Name. Being at the Time of the Rebellion in *Scotland*, by Leave from the Regiment, he was taken Prisoner by Brigadier *Mackintosh*, after his passing the *Forth*, and by him, very probably, persuaded into the Rebellion; though it has been said of him, that he was us'd like a Prisoner in the Rebel Army; which, 'tis certain, he engag'd, and distinguish'd himself in, in the Action at *Preston*, where he behav'd well, and own'd the Cause at his Death: He had generally the Character of a soft, half-witted Person; but he made a good End, and dy'd like a Christian, as the rest did.

A LIST of those who were try'd for the Rebellion, by a special Commission of Oyer and Terminer, at Leverpoole, *before Mr. Baron* Bury, *Mr. Justice* Eyre, *and Mr. Baron* Montague, *begun* January the 11*th*, 1715-16.

Richard Shuttleworth,
Roger Moncaster,
Thomas Cowpe,
William Butler,
William Ackwright,
} Found guilty.

Richard

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Richard Chorley, Attorney,
Charles Chorley,
James Drummond,
James Mackintoſh,
Thomas Shawe,
William Black,
Donauld Mac Donauld,
Rorie Kennedy,
James Pleaſington,
James Burne,
John Ord,
John Rowbotham,
Joſeph Waddeſworth,
Thomas Cartmell,
John Mac Callum,
Donauld Smith,
John Mac Gillivray,
James Blundell,
William Harris,
Stephen Seagar,
James Blackwood,
Andrew Davidſon,
William Fergusſon,
Patrick Smith,
Andrew Doll, alias *Dugall*,
Thomas Siddall,
James Finch,
Joſeph Porter,
Thomas Foſter,
Malcolm Stewart,
Alexander Stewart,
William Whalley,
Thomas Gooſe,
Milo Begg,
James Bow,
George Mackintoſh,
John Mac Gregor,

} Found guilty.

John

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John Stewart,
John Mackquean,
John Robertſon,
Hercules Durham,
Archibald Maclachlan,
Donauld Robertſon, Senior,
Robert Stewart,
John Finch,
Chriſtopher Carus,
Alexander Drummond,
John Stewart,
Archibald Menzies,
Robert Crowe,
John Crowe,
Richard Withrington,
Richard Birches,
Allan Sanderſon,
Kenneth Mackenſey,
John Kennedy,
George Collingwood,
} Found guilty.

Henry Walmeſley,
Henry Rowbotham,
Edward Sykes,
Fenlow Fergusſon,
Thomas Walmeſley,
Donauld Robertſon, Jun.
Richard Blackburne,
} Found *not guilty*.

George Hodgſon,
Archibald Burnett, Attorney,
Leonard Hunter,
} Guilty by Confeſſion.

Thomas Jackſon,
Alexander Binnee,
} Guilty, but dy'd under *Sentence*.

Thoſe

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Thoſe who ſuffer'd of theſe, were, *viz.*

Richard Shuttleworth, *Roger Moncaſter,* *Thomas Cowpe,* *William Butler,* *William Ackwright,*	Executed at *Preſton, Jan.* 28.
Richard Chorley, Eſq; *James Drummond,* *William Black,* *Donauld Mac Donauld,* *Rorie Kennedy,* *John Ord,* *John Rowbotham,*	Executed on *Thurſday, Feb.* 9. at *Preſton.*
James Blundell, *James Burne* *James Finch,* *William Whalley,* *John Mac Gillivray,*	Executed on *Friday, Feb.* 9. at *Wigan.*
Thomas Siddall, *William Harris,* *Stephen Seager,* *Joſeph Porter,* *John Finch,*	Executed on *Saturday, Feb.* 11. at *Mancheſter.*
Alexander Drummond, *Archibald Burnett,* *Leonard Hunter,* *George Collingwood,*	Executed at *Leverpoole, Feb.* 25.
Donauld Robertſon, *George Mackintoſh,* *Richard Birches,* *Kenneth Mackenſie,*	Executed at *Leverpoole.*

Donauld

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Donauld Smith,
Hercules Durham,
Archibald Menzies,
Robert Crowe,
Allan Sanderſon,
} Executed at *Garſtang.*

Among the firſt five executed at *Preſton*, were two Perſons of ſome Note; that is, *Shuttleworth*, and *Moncaſter:* The former was a Man of Eſtate, a *Papiſt*, and very rough in his Nature; he was generally accus'd by the Enemies to the Rebellion, with having Gaggs in his Cuſtody, wherewith to torment the Proteſtants; but nothing of it appear'd at his Trial, and he deny'd it at his Death, when queſtion'd concerning it by Mr. *Peplow*, Miniſter of *Preſton*, and others, though ſuch things were handed about, as found in his Houſe. It was ſworn againſt him on his Trial, that he ſhould ſay, he *hoped to ſee the Streets in* Preſton *run with heretick Blood, as faſt as they did in great Rains.* And this he did not deny, when he was ask'd about it by the Reverend Perſon aforeſaid, nor would he directly own it.

Moncaſter was an Attorney, and had been corupted by Converſation with Papiſts, and others not affected to the Government; but he liv'd to repent, as appears by the Speech he made at the Place of Execution. The other three were Papiſts, ſaid nothing when they died, which they did very reſervedly, and were juſtly ſuſpected to have been drinking Brandy.

The

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The dying Speech of Roger Moncaſter, *Gent. one of the Rebels, executed at* Preſton, *&c.*

Dear Friends,

'I Am brought hither to be a miſerable and diſmal Spectacle to you all. The Crime that I am accuſed of, condemn'd, and brought hither to be executed for, bears no meaner, or leſs infamous Title, than *Rebellion*; a Crime prohibited both by the Laws of God and Man; and though I be the Perſon (not the only Perſon) to ſuffer for it, yet do declare, that from my Heart I do deteſt and abhor the very Principles of Rebellion, and look upon the Promoters and Abetters thereof, to be Men without any, or at leaſt, any good Principles; and Enemies, in the higheſt Degree, to their lawful Sovereign King *George*, and Country.

'I ſhall not trouble you any further with this, but acquaint you, that upon a ſerious Recollection of my by-paſt, and, God knows, too long continued Tranſgreſſions and Offences, both againſt God and Man, and a ſtrict View and Enquiry (to the utmoſt of my Power) into my wicked Courſe of Life, thoſe very Sins that I have wretchedly committed, have brought the deſerved Vengeance of God upon me, though they ſhelter and cloak themſelves under the baſe Title of *my Crime*. I heartily, and with the utmoſt Sincerity, repent of my Sins, of what Nature ſoever; and hope, through Faith, and the Merits and Interceſſion of my bleſſed Saviour and Redeemer, to obtain Remiſſion thereof. I die in perfect Charity with all Men; and freely from

'from my Heart forgive all, particularly every one concerned in my Execution; desiring 'Forgiveness of all Persons here present, or 'elsewhere, whom, in any wise, I have offended.

'I was educated in the Protestant Religion 'of the established Church of *England*; have 'continued so all my Life, and die in the same; 'and am sorry that I should blemish that 'Church by my late Proceedings, for which I 'now die; and beg your Patience to hear me 'repeat the Articles of my Christian Faith:

I *Believe in God, the Father Almighty, Maker of Heaven and Earth. And in Jesus Christ his only Son our Lord, who was conceived by the Holy Ghost, born of the Virgin Mary; suffered under Pontius Pilate, was crucified, dead, and buried, he descended into Hell; the third Day he rose again from the Dead: He ascended into Heaven, and sitteth on the right Haud of God, the Father Almighty; from thence he shall come to judge the Quick and the Dead.*

I believe in the Holy Ghost; the holy Catholick Church; the Communion of Saints; the Forgiveness of Sins; the Resurrection of the Body; and the Life everlasting. Amen.

'I desire that you will take such Caution 'from my *unfortunate Example*, as may prevent 'the like to any of you. I desire you will all 'join with, and for me, in Prayers to Almighty God, for Remission of my Sins; and 'that, through the Merits and Mediation of 'his blessed Son, our only Saviour and Redeemer, I may meet with a glorious Resurrection to Life eternal.

Those

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Thoſe beſides of any Note, who ſuffer'd in *Lancaſhire*, were *Richard Chorley*, Eſq; an active and zealous Papiſt, of the County of *Lancaſter*. His Son was condemn'd with him for the Rebellion, but ſav'd.

George Collingwood, Eſq; of *Eſlington* in *Northumberland*, chief of that Family, and had about 1200*l.* a Year clear Eſtate; married a Daughter of the Lord Viſcount *Montacute*, a Papiſt, and ſaid little at his Death.

Archibald Burnett, Eſq; of *Carlips*, had an Eſtate of about 200*l.* a Year near *Edinburgh*. He was Standard-Bearer to the Pretender, a Man of fine Preſence and Perſon, and behav'd well at his Death, but made no Speech.

Robert Crowe, Father of *John Crowe*, condemned with him. He was a Man of ſome ſmall Eſtate on the Borders of *Scotland*; but not otherwiſe noted.

Allan Sanderſon was a Perſon not of much Note, except that he liv'd all his Life a Proteſtant, and declar'd himſelf at the Gallows a Papiſt.

Alexander Drummond, a Relation of the Lord *Drummond*'s: He was a young Man of moſt comely Perſonage, and drew great Compaſſion from moſt People. It was him for whom ſome young Women of the better Sort at *Leverpoole* hazarded their Fame, by appearing before the Judges to intercede for his Life, and thereby involving themſelves in a Suſpicion of countenancing his Crime; but this did not ſucceed, and he was brought to Execution; which he underwent with a becoming Courage and Reſolution, and drew a great deal of Compaſſion from the Spectators.

James

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James Blundel, was a Church-Warden of *Standish*: He came with Horse and Arms to the Rebels, and was to have been one of the Militia, who were then to be rais'd, and was said to have been appointed by the Rector.

None of these, or the rest, said any thing at their Executions, as to the Fact they dy'd for, except *Moncaster*; and about a third Part of them only were Protestants.

Shuttleworth's Head was affixed on the Town Hall, or Market-House, at *Preston*; and *Thomas Syddal*'s, Captain of the *Mancheſter* Mob, on the Hall of that Town; one at *Lancaster*, one at *Garstang*, and another at *Preston*; the rest, with their Bodies, were permitted to be buried.

About 500 of the inferiour Prisoners taken at *Preston*, had been sent to *Chester-Castle*, others to *Lancaster* and *Leverpoole*; of whom we shall speak hereafter.

A LIST of those who surrender'd Prisoners at *Preston*.

Note, Those with this Mark * are *Papists*.

The ENGLISH.

MR. *Forster*, Gener.
Earl of *Derwentwater*. *
Lord *Widdrington*. *
Mr. *Edward Howard*. *
Mr. *Charles Ratcliff*. *
Charles Widdrington, Gent. *
Per. Widdrington. *
Walter Tankard. *
John Thornton. *
John Clavering. *
John Clavering. *
William Clavering. *
Nich. Wogan. *
Charles Wogan. *
John Talbot. *
Robert Talbot. *
Roger Salked. *
Geo. Collingwood. *
John Hunter.
Edward Ard.

Will.

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W. Tunſtall, Paymaſter General. *
William Shaftoe.
John Shaftoe. *
Edward Shaftoe
John Shaftoe.
Edw. Swinburn. *
James Swinburn.
Geo. Gibſon. *
Edward Buyers.
Richard Stockart.
William Charleton.
Edward Charleton. *
Charles Chorley. *
Richard Chorley. *
Ra. Standiſh. *
Fran. Aderton. *
Richard Townley. *
John Dalton. *
John Layborn. *
Gab. Hasketh. *
Cuthbert Hasketh *
Thomas Walton. *
Edward Tildeſley. *
Thomas Errington. *
Philip Hudſon. *
James Talbot. *
Alex. Deaſines.

Lyon Walden.
John Meſterſon.
Geo. Sanderſon. *
Geo. Budding.
John Cotton.
Robert Cotton.
Richard Gaſcoigne. *
John Hunter.
William Hardwick.
Rich Butler. *
Robert Patten.
William Caſton.
Thomas Liſle.
Thomas Forſter.
William Raine.
Thomas Riddle, *
Hen. Widdrington. *
Richard Ard.
William Sanderſon. *
John Towle. *
John Hocherſalt.
Fr. Thornbuck.
John Heale.
Edward Mackey.
Henry Oxburgh. *
William Dobſon.
John Beaumont.
John Croſts.

Their Followers or SERVANTS.

Robert Bruce.
Val. Errington.
Edward Tinklar.
John Atkinſon.
John Militſon.
John Patrick.

J. Bywater.
Jonnage Aron.
Henry Maſſon.
William Smell.
John Holt.
And. Thompſon.

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James Shaw.
John Burtham.
Nich. Doyle.
Tho. Holling.
Edward Bullock.
John Omfield.
Thomas Moore.
John Rowland.
Nich. Wilson.
Corn. Stewart.
Luke Blacket.
Thomas Dixon.
Oliver Hamilton.
William Ansley.
Robert Stubs.
Henry Rowley.
John Todd.
William Stewart.
Roger Balson.
John Wilson.
Thomas Smith.
John Thornton.
James Robson.
William Hardy.
James Mills.
John Brady.
Robert Brown.
James Wilkinson.
John Clarke.
Mich. Moses.
Will. Farnworth.
John Farnworth.
William Wilson.
William Tash.
Henry Gardiner.
John Steele.
Ra. Todd.
Henry Todd.
John Todd.
Char. May.
Henry Ashley.
William Ratcliff.
William Witson.
John Thornton.
William Young.
Henry Wilson.
Cuthbert Hasket.
Leonard Ord.
William Scot.
Thomas Fareburn.
James Richmond.
James Asington.
Albert Hacksel.
John Tusker.
Tim. Flanakan.
Char. Bartes.
Ro. Finkle.
James Wilson.
William Todd.
William Read.
R. Wilson.

A LIST of the Noblemen, Gentlemen, Followers, or Servants of SCOTS.

The Earl of *Nithisdale*, { Evander M. Criver. / Patrick M. Cornick.

The

The Earl of *Winton*.	Thomas Eſon. John Turrin. John Stewart. George Mackſwell. John Miln. Alexander Simſon. John Buckham. John Stobie. Robert Taylor.
The Earl of *Carnwath*,	William Montgomery. George Criſty. John Baptiſt. Hugh Dobie. Alexander Donaldſon.
Viſcount *Kenmure*,	William Dunlop. Alexander Thornſon. John Mackintoſh.
Lord *Nairn*,	Thomas Biſet. Ja. Robertſon. Ja. Hardie. —— Wilſiot.
Maſter of *Nairn*,	James Chalmers.
Lord *Charles Murray*,	Francis Lander. James Cameron. Don. M. Donauld.
Ma. *Baſil Hamilton*,	Dan. M. Gregory. Peter Martin. James Stewart
George Seton of *Barne*,	James Clarke. Thomas Kennedy.
Capt. *Ja. Daziel*, Brigadier *Mackintoſh*,	Alexander Comming. Arch. Kennedy. John Mackintoſh.
Col. *Stewart*, Mr. *William Erring*, *Alexand. Forreſter*,	Henry Nicholſon. David Brock.

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William Grierſon, { James Dagleiſh. / Geo. Carrick. / Cha. Donaldſon.

Gilbert Grierſon,
William Calderwood,
Robert M. Clean,
Robert Cruthers, John Richardſon.
Andrew Caſhie, Peter Wilſon.
Mr. Lockart Alexander Fleming.
Ja. Skeen.
Walter Riddle.
Richard Harris, *of Brig.* Preſton's.

A LIST of Officers of Logie's *Regiment.*

David Drummond, *Cap.* Alexander Drummond.
John Carnegy, *Capt.* Arch. M. Langhlin.
Alex. Macrudder, *Cap.* William Gruder.
James Drummond.

Lord Nairn's *Regiment of Officers.*

Lord Nairn, *Col.* James Robertſon, *Capt.*
J. Stewart, *Lieut. Col.* Robert Stewart,
John Blare, *Major.* Arch. Butter.
Alex. Robertſon, *Capt.* John Stewart.
James Stewart, *Capt.*

SUBALTERNS.

James Ramſey.
Malcolm Stewart. John Stewart,
Alex. Ferguſon. Robert Menzies.
John M. Donauld. John Cuniſon.
John Stewart. James Robertſon.
Donald Robertſon. Gilbert Ridd.

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SURGEONS.

Robert Robertſon.	Robert Stewart.
Robert Stewart.	Arch. Menzies.
John Stewart.	Alex. Stewart.
Finley Fergusſon.	James Fergusſon.
John Cameron.	Patrick Blare.
M. James Stewart.	Donald M. Donauld.

A LIST of the Officers of Mar's *Battalion.*

Nath. Forbes, *Major.*	John Cattanack, *Lieut.*
John James, *Capt.*	Henry Lamſden, *Lieut.*
Donald Fergusſon, *Capt.*	Robert Kerdod, *Lieut.*
John Gordon, *Capt.*	

Lord Charles Murray's *Regiment.*

Lord Murray, *Col.*	Alex. Minnerys, *Capt.*
Mr. of Nairn, *Lieut. Col.*	Don. Robertſon, *Capt.*
James Stewart, *Major.*	John Robertſon, *Capt.*
James Minnerys, *Capt.*	Patrick Robertſon, *Cap.*
Robert Minnerys.	John M. Kevan.
Adam Ridd.	Duncom Campbell.
John Stewart.	John Rotſon.
John Rotſon.	Ja. Rotſon.
Alexander Stewart.	John Stewart.

Col. Mackintoſh's *Battalion of Officers.*

—— Mackintoſh, *Col.*	Farg. M. Gilroy, *Lieut.*
—— Fergusſon, *Lt. Col.*	John M. Beane, *Lieut.*
John Mackintoſh, *Maj.*	Argus Shaw, *Lieut.*
Laug. M. Laughlin, *Capt.*	Benj. Mackintoſh, *Lieut.*
Farq. M. Gilroy, *Capt.*	Will. Maquin, *Lieut.*
Argus M. Beane, *Capt.*	John Mackintoſh, *Lieut.*
Robert Shaw, *Capt.*	Don. Mackintoſh. *Lieut.*
Dunc. Mackintoſh, *Cap.*	J. Abercromma, *Lieut.*
W. Mackintoſh, *Capt.*	David Stewart, *Lieut.*
Arg. Mackintoſh, *Capt.*	W. Mackintoſh, *Lieut.*
Laug. Mackintoſh, *Cap.*	Dan. M. Grom, Adj.
Fr. Farquharſon, *Capt.*	Dav. M. Gen. Paymaſter.
Laug. M. Cleane, *Capt.*	W. Shaw, Quartermaſt.

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J. Farquharſon, *Capt.*	Mr. J. Mackintoſh, *Lieut.*
W. M. Gilroy, *Lieut.*	J. Abercromby, *Lieut.*
J. Mackintoſh, *Lieut.*	*and* Aide de Camp.
Allen M. Clean.	Dungan M. Gvien.
James Mackintoſh.	Laughlin Mackintoſh.
W. M. Gilroy.	Paul M. Shaile.
Hugh Fazer.	William Nailn.
Dan. Shaw.	John Dunbar.
John Mackintoſh.	Collin Falmour.

A LIST of the Officers of Strathmore's *Regiment.*

William Douglas, *Capt.*	John Bunns, *Lieut.*
William Miller, *Capt.*	Patrick Douglas, *Enſ.*
John Serinzer, *Capt.*	Hugh Kenn, *Enſ.*
James Balfour, *Capt.*	Alex. Macgiven, *Enſ.*
William Lyon, *Lieut.*	Andrew Mamſey, *Enſ.*
Alex. Murray, *Lieut.*	Hen. Ogilvy, *Enſ.*
Alex. Orrack, *Lieut.*	W. Henderſon, *Q. maſt.*

Noblemen and Gentlemen of the *Engliſh*	75
Their Vaſſals, or Followers and Servants	83
Private Men in the Church	305
Total of *Engliſh*	463
Noblemen, Officers, and Gentlemen *Scotch*	143
Their Vaſſals, Servants, and others	862
Total of *Scotch*	1005
Engliſh in *Preſton*	463
Taken at *Lancaſter*	4
	467
Scotch in *Preſton* 1005	1022
Taken in *Lancaſter* 17	
Total	1489

An

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An Account of the Seven Lords impeached by Parliament, and all Proceedings relating to them, viz. James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithisdale, George *Earl of* Winton, Robert *Earl of* Carnwath, William *Viscount* Kenmure, *and* William *Lord* Nairn.

ON the 9th of *January*, the Day the Parliament met, after the King had made his Speech from the Throne, and was retired, the Commons returning to their own House, as soon as they had voted an Address of Thanks to his Majesty, it was voted in the Committee appointed to draw up the said Address, that a Message should be sent to the Lords, to desire them to continue Sitting, the House of Commons having Matters to communicate to them of great Importance, which the Lords agreed to; and, after a very little Time spent, it was agreed, *nemine contradicente*, to impeach *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, of High Treason. These Impeachments were severally made, and begun by Mr. *Lechmere*, Mr. *Pulteney*, Mr. *Boscawen*, Mr. *Hampden*, Lord *Finch*, Earl of *Hertford*, and Mr. *Wortley*, who were order'd to carry them up to the Lords; which was done in the Manner following:

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My Lords,

THE Commons of *Great Britain* in Parliament aſſembled, having receiv'd Information of divers Treaſons committed by a great Peer of this Houſe, *James* Earl of *Derwentwater*, have commanded me (Mr. *Lechmere*) to impeach *James* Earl of *Derwentwater*, of High Treaſon: And I do in their Names, and in the Names of all the Commons of *Great Britain*, impeach the ſaid *James*, Earl of *Derwentwater*, of High Treaſon. And I am further commanded by the Houſe of Commons, to acquaint your Lordſhips, that they will, with all convenient Speed, exhibit Articles to make good the Charge againſt him.

The other ſix Impeachments were in the ſame Form, and ſeverally made by the Gentlemen before recited. After which, the ſaid impeaching Members returning to their own Houſe; Mr. *Lechmere* reported their Proceeding at the Bar of the Lord's Houſe; and then it was order'd, that a ſecond Meſſage ſhould be ſent to the Lords, to deſire them to continue ſitting ſome Time longer; which Meſſage the Lords comply'd with: And then it was mov'd, to appoint a Committee to draw up Articles of Impeachment; which was done, and they retired to the Speaker's Chamber, where, in a ſhort Time, leſs than two Hours, they returned, Mr. *Lechmere* being Chairman, and reported, that they had drawn up Articles of Impeachment accordingly, which he read in his Place; which, after voting a Clauſe to reſerve a Right to exhibit other Articles, upon Occaſion, were order-

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ed to be ingroſs'd, and then they were read as follows:

ARTICLES of Impeachment of High Treaſon exhibited againſt James *Earl of* Derwentwater, William *Lord* Widdrington, William *Earl of* Nithiſdale, George *Earl of* Winton, Robert *Earl of* Carnwath, William *Viſcount* Kenmure, *and* William *Lord* Nairn.

WHEREAS, for many Years laſt, a moſt wicked Deſign and Contrivance has been formed and carried on, to ſubvert the ancient and eſtabliſhed Government, and the good Laws of theſe Kingdoms, to extirpate the true Proteſtant Religion therein eſtabliſhed, and to deſtroy its Profeſſors; and, inſtead thereof, to introduce and ſettle Popery and arbitrary Power; in which unnatural and horrid Conſpiracy, great Numbers of Perſons, of different Degrees and Qualities, have concerned themſelves, and acted; and many Proteſtants, pretending an uncommon Zeal for the Church of *England*, have join'd themſelves with profeſſed Papiſts, uniting their Endeavours to accompliſh and execute the aforeſaid wicked and traiterous Deſigns.

And whereas it pleaſed Almighty God, in his good Providence, and in his great Mercy and Goodneſs to theſe Nations, to crown the unwearied Endeavours of his late Majeſty King *William* the Third, of ever glorious Memory, by making him the Inſtrument to procure the Settlement of the Crown of theſe Realms in the illuſtrious Houſe of *Hanover*, as the only Means, under God, to preſerve our Religion, Laws, and Liberties, and to ſecure the Proteſtant

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toſtant Intereſt of *Europe*; ſince which happy Eſtabliſhment, the ſaid Conſpirators have been indefatigable in their Endeavours to deſtroy the ſame, and to make Way for the vain and groundleſs Hopes of a ſpurious Impoſtor and Popiſh Pretender, to the Imperial Crown of theſe Realms.

And to accompliſh theſe Ends, the moſt immoral, irreligious, and unchriſtian-like Methods have been taken; but more particularly in the laſt Years of the Reign of the late Queen *Anne*; during which Time, all imaginable Endeavours were uſed by the ſaid Conſpirators, to prejudice the Minds of the Subjects of this Realm, againſt the Legality and Juſtice of the ſaid Settlement of the Crown: And for that Purpoſe, the holy Scriptures were wreſted, and the moſt wholſome Doctrines of the Church of *England* perverted and abuſed by Men in holy Orders, in the moſt publick and ſcandalous Manner, in order to condemn the Juſtice of the late happy Revolution; and thereby to ſap and undermine the Foundation of the ſaid happy Eſtabliſhment; and the moſt notorious Inſtruments of theſe wicked Purpoſes were countenanced, by particular Marks of publick Favour and Diſtinction; falſe and dangerous Notions of a ſole hereditary Right to the Imperial Crown of theſe Realms, were propagated and encouraged by Perſons in the higheſt Truſt and Employments, contrary to the ancient, undoubted, and eſtabliſhed Laws of theſe Kingdoms; jeſuitical and ſcandalous Diſtinctions were invented, and publickly inculcated, to enervate the Force and Obligation of thoſe Oaths, which had been contrived in the plaineſt and ſtrongeſt Terms, by the Wiſ-

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dom of Parliament, for the Security of the said Establishment; and to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators, of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths; groundless Fears of the Danger of the Church of *England*, were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants.

By all which, and many other such ungodly Practices of the said Conspirators, the most causeless and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants, were much disquieted.

But nevertheless these dishoneſt Methods were pursued by the said Conspirators with indefatigable Industry, as the only Means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Balance of Power in *Europe*, were further Steps necessary to compleat the Designs of the said Conspirators; and the same being effected by the late ignominious Peace with *France*, the *French* King was rendred formidable, and the Protestant Succession was thereby brought into the most imminent Danger; and by these, and other pernicious Measures, the Destruction so long intended by the said Conspirators for these poor Nations, seem'd near at Hand.

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At which Time, and under which moſt deplorable Circumſtances, it pleaſed Almighty God, in his infinite Wiſdom, to call to himſelf the late Queen *Anne*, and, by a Concurrence of many moſt wonderful Providences, to give a quiet and peaceable Acceſſion to his preſent moſt Gracious Majeſty, to the Throne of his Anceſtors; to which he was received with one full Voice and Conſent of Tongue and Heart, and the united Joy of every good Subject, and good Proteſtant, as their only lawful and rightful Liege Lord; and although from the Moment his Majeſty aſcended the Throne to this Day, his Reign has been one Series of Wiſdom, Juſtice, and Clemency; his Labours conſtant, unwearied, and ſucceſsful, to retrieve the Honour and Reputation of theſe Nations, to re-eſtabliſh the Trade, and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderneſs ſhewn even to his Popiſh Subjects, and his conſtant Care has been to procure the univerſal Good of his People; nevertheleſs, the ſaid Conſpirators have, by the moſt vile and impious Methods, renewed their Endeavours to throw theſe Kingdoms into the utmoſt Confuſion, and to entail endleſs Miſeries on us, and our Poſterities: For theſe Ends, many of the abovementioned moſt wicked and dangerous Practices have been repeated with the utmoſt Induſtry and Inveteracy, to delude, diſorder, and corrupt the Minds of his Majeſty's good Subjects; the moſt groundleſs Jealouſies have been fomented againſt his wiſe and happy Adminiſtration; and in many Parts of his Kingdoms, the moſt unnatural, unexampled Riots and

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and Tumults, by the ſecret and malicious Endeavours of the ſaid Conſpirators, have been procured, ſtirred up, and encouraged againſt his peaceable, proteſtant Subjects, under falſe Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and ſeduce them from their Allegiance, and prepare them for an open Rebellion.

And the ſaid Conſpirators having at length reſolved to deprive theſe Nations of the invaluable Bleſſings which they now enjoy, under the wiſe and gentle Reign of his preſent moſt gracious Majeſty King *George*, and of the certain Proſpect of Happineſs which they have for their Poſterity, in a Succeſſion of Princes derived from himſelf, did contrive, confederate, and reſolve to put their moſt malicious, wicked, and traiterous Deſigns into immediate Execution; for which Purpoſe, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas Forſter*, Jun. the Lord *Charles Murray*, *Edward Howard*, *Thomas Errington*, *John Claverring*, *William Shaftoe*, Sir *Francis Anderton*, *Ralph Standiſh*, *Richard Townly*, *Thomas Butler*, *Thomas Walton*, *Gabriel Haſket*, *Richard Gaſcoigne*, and divers other Perſons, as falſe Traytors to his preſent moſt ſacred Majeſty King *George*, the only lawful and undoubted Sovereign of theſe Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they, as good and faithful Subjects, owed to his ſaid Majeſty, did, in or about the Months of *September*, *October*, or *November*,

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1715. moſt wickedly, maliciouſly, falſly, and traiterouſly imagine, and compaſs the Death of his ſaid moſt ſacred Majeſty.

And for the accompliſhing and executing their ſaid traiterous Purpoſe, they, the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, did, in or about the ſaid Months, or ſome of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterouſly agree, confederate, conſpire, and reſolve together, with many other evil-diſpoſed Perſons, to raiſe, excite, and levy, within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County Palatine of *Lancaſter*, and elſewhere within this Kingdom, a moſt cruel, bloody, and deſtructive War, againſt his Majeſty, in order to depoſe and murther his ſacred Majeſty, and to deprive him of his Royal State, Crown, and Dignity.

And the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforeſaid, in the Counties aforeſaid, or ſome of them, did gather together great Numbers of his Majeſty's Subjects, and with them did aſſemble in a warlike and traiterous Manner, in order to raiſe Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition, and warlike Inſtruments, at the Times and Places aforeſaid, or ſome of them, did form and compoſe, or did

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assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for, and in Behalf, and in Favour of the said Pretender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times, and Places aforesaid, and at divers other Times and Places within this Kingdom, did maliciously and traiterously make, levy, and raise War and Rebellion against his most sacred Majesty, and in a warlike and hostile Manner, did march through, and invade several Parts of this Kingdom, and did unlawfully take and seize the Horses, and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty; and in other Places did take and seize, from his Majesty's faithful Subjects, Guns, and other warlike Instruments, for the carrying on their traiterous Purposes.

And the said last mentioned Conspirators, their Accomplices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed, in the most publick and solemn Manner, as King of these Realms; and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize, from his Majesty's Officers of the Revenue, the publick Money, for the Use and Service of the said Pretender; and though many of the Conspirators are avowed Professors of the Popish Religion, yet, the more effectually to cover and disguise their most

moſt wicked and traiterous Deſigns, and to delude his Majeſty's Subjects, they did prevail on, and procure ſeveral Men in holy Orders, Miniſters of the Church of *England*, and who had before that Time abjured the ſaid Pretender, to accompany, countenance, and abet the ſaid moſt traiterous Enterprize; and in ſeveral Places in the Counties aforeſaid, where the ſaid Conſpirators, their Complices and Confederates then were, to pray for the ſaid Pretender in the publick Churches, as King of theſe Realms.

That the ſaid laſt mentioned Conſpirators, their Accomplices and Confederates, did, on or about the ninth, tenth, eleventh, twelfth, or thirteenth of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton*, in the County Palatine of *Lancaſter*, againſt his Majeſty; and did then, and there, in a warlike and hoſtile Manner, levy War, oppoſe, engage, and fight againſt his Majeſty's Forces; and did then, and there, cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects.

All which Treaſons and Crimes abovementioned, were contrived, committed, perpetrated, acted, and done, by the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and other the Conſpirators aforeſaid, againſt our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and againſt the Laws and Statutes of this Kingdom.

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Of all which Treaſons and Crimes, the Knights, Citizens, and Burgeſſes in Parliament aſſembled, do, in the Name of themſelves, and of all the Commons of *Great Britain*, impeach the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*, and every of them.

And the ſaid Commons by Proteſtation ſaving to themſelves the Liberty of exhibiting at any time hereafter, any other Accuſations or Impeachments againſt the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them; and alſo of replying to the Anſwers, which the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, or any of them, ſhall make to the Premiſſes, or any of them, or to any Impeachment or Accuſation that ſhall be by them exhibited, according to the Courſe and Proceedings of Parliament; and do pray, that the ſaid *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, be put to anſwer all and every the Premiſſes; and that ſuch Proceedings, Examinations, Trials, and Judgments, may be upon them, and every of them had and uſed, as ſhall be agreeable to Law and Juſtice.

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After the reading of these Articles, they were carried up to the Lords, who having likewise read them, made an Order, that the seven impeached Lords should be brought down to the Bar of their House the next Day.

Accordingly, *Tuesday* the 10*th* of *January*, the seven impeached Lords were brought under a strong Guard from the *Tower* to *Westminster-Hall*; and being plac'd at the Bar of the House of Lords, the Articles of Impeachment were then read to them: After which, the Lord Chancellor ask'd them severally, what Answer they had to make? And acquainted them, that if they had any thing to request of the House, this was the proper Time; and an Order was made for them to put in their Answers on the *Saturday* following; at which Time, upon the Request of the Earl of *Derwentwater*, and Lord *Widdrington*, it was further put off till *Monday* the 16*th* of *January*; and then the House being mov'd, in regard the Council assign'd some of the Lords refus'd to be concern'd for them, it was farther deferr'd to the 19*th* of *January*.

Thursday, the 19*th* of *January*, the seven impeached Lords were again brought from the *Tower* to *Westminster*, in order to put in their several Answers to the Articles of Impeachment exhibited against them, (the Earl of *Winton* making a particular Defence, what relates to his Lordship, will be spoke of by it self,) the other six were severally brought to the Bar in the usual Form; and first the Earl of *Derwentwater*, where he kneel'd, till the Lord Chancellor directed him to rise, and demanded of him, if he was ready to put in his Answer; which he said he was, and deliver'd the same at the Bar, which was ordered to be read.

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The Anſwer of James *Earl of* Derwentwater, *to the Articles of Impeachment of High Treaſon exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

TO a Charge of ſo high and heinous a Nature, the ſaid Earl cannot anſwer without the deepeſt Concern and Affliction, which becomes more weighty, from the Share the honourable Houſe of Commons have been pleaſed to take in the Accuſation. He aſſures himſelf, however, that great Aſſembly doth not engage in the Proſecution of an Offence, ſo open to Conviction in the ordinary Courſe of Law, with Deſign to intercept that Mercy which the Earl, from the Report of his Majeſty's natural Goodneſs, had Reaſon to expect. It would be a Thought unworthy any Member of that Auguſt Body, to imagine he could have the leaſt Deſire of ſpilling the Blood of any of his Fellow-Subjects, whom his Majeſty's great Wiſdom ſhould think a fit Object of his Mercy; the ſaid Earl therefore hopes, that his Proſecution is taken out of the common Courſe of Juſtice, with Intention, that if in his particular Caſe there ſhall appear any Circumſtances inducing Favour or Compaſſion, both your Lordſhips and the Commons may be Interceſſors with his Majeſty for Grace towards him; whereby the Exerciſe of the Royal Mercy, upon which the Earl depended, (which amongſt all the Virtues of the Crown, moſt endears a Monarch to the Love and Affection of his People,) may be extended in ſuch Manner, as may demonſtrate that Clemency, for which

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his Majeſty is ſo greatly renowned, and not encourage any to offend, upon the Preſumption of it for the future. The ſaid Earl acknowledges, with a real Sorrow, that at the Time in the Articles mentioned, he was in Arms, and with others did march through, and invade ſeveral Parts of this Kingdom; and confeſſes, *he is thereby guilty of the Offence wherewith he is charged in the ſaid Articles.* But if any Offence of that kind was ever attended with Circumſtances which might move Compaſſion, the ſaid Earl hopes he may be intitled to it. He begs Leave to inform your Lordſhips, that his Temper and Inclination diſpoſed him to live peaceably under his Majeſty's Government, and he never had the leaſt Prejudice or Malice againſt his Perſon, nor was he ever heretofore concerned in, or privy to, any Deſign or Contrivance to ſubvert or diſturb the eſtabliſhed Government, the Laws, or Religion of this Kingdom; and if any Methods were taken by others to accompliſh any of thoſe Ends, he was abſolutely a Stranger to them; nor did he now engage in this unhappy Undertaking, upon any previous Concert or Contrivance for any ſuch Purpoſe; but being young and unexperienced, he raſhly, and without any Deliberation, engaged himſelf to meet at *Plainfield* in *Northumberland*, on Aſſurance that many of his Relations and Acquaintance would appear there; that his Undertaking was ſudden, appears in that he engaged in it without any previous Preparation of Men, Horſes, Arms, or other warlike Accoutrements; and as the ſaid Earl cannot be juſtly reproached with any cruel, ſevere, or harſh Action, during the Continuance in Arms, ſo he took the firſt Opportu-

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nity of submitting to the King's Mercy. After the sudden Skirmishes at *Preston*, the said Earl, with others, was sollicitous to prevent any further Destruction of the Lives of his Majesty's Subjects, and instrumental to induce all in Arms to submit themselves to the King, provided they might be secured of their Lives. One of his Majesty's Officers, sent from the General, gave them Encouragement to believe, that the Surrender of themselves would be the ready Way to obtain the King's Mercy. In Confidence whereof, when a Cessation was agreed on, the said Earl offer'd himself to become one of the Hostages for them till the next Morning; in which Time he received further Assurances from the Officers, that the King was a Prince of known Clemency; that this was a distinguishing Part of his Character; and that the free Surrender to Mercy, would be the most proper Means to obtain it. The said Earl believes his Majesty's Officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at *Preston*, to make their Way thro' his Majesty's Forces; but this Attempt must have occasioned the Loss of many Lives, and might have been productive of ill Consequences to the Government, which the said Earl was desirous to prevent; and when the Time agreed on for the Cessation was near expired, and General *Wills* seemed uneasy in not having received any Message from those in the Town, the said Earl writ a Letter, to exhort them to surrender to the King's Mercy; and at the same Time declared to the said General, and other Officers, that whatever happened, he was determined to continue with them, and rely

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entirely on his Majeſty's Clemency and Goodneſs, which he had Encouragement to expect; and in ſuch Circumſtances, the ſaid Earl cannot diſtruſt your Lordſhips, or the Commons Readineſs, to uſe their Mediation for Mercy on his Behalf, which will lay him under the higheſt Obligations of Duty and Affection to his Majeſty, and perpetual Gratitude to both Houſes of Parliament.

Derwentwater.

The material Words of which Anſwer, appearing not to be ſufficiently expreſs and clear, the Lord Chancellor asked the ſaid Earl, if he meant by the ſaid Anſwer to plead guilty to the ſaid Articles of Impeachment. He ſaid *he did*, and ſubmitted to the King's Mercy, and humbly deſired their Lordſhips Interceſſion to his Majeſty; and his ſaid Anſwer and Plea was recorded accordingly. And he withdrew.

Then the Lord *Widdrington* was brought to the Bar, and having there alſo kneeled, was acquainted by the Lord Chancellor with the aforementioned Order, and ask'd the ſame Queſtion as the Earl of *Derwentwater*; and he likewiſe deliver'd in his Anſwer, which was read as follows:

The Anſwer of William *Lord* Widdrington, *to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

IT is with inexpreſſible Concern and Affliction the ſaid Lord appears before this Auguſt Aſſembly, charged with Crimes of the moſt hei-

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heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make use of all Manner of Defence, especially in the Case of Life; yet as he surrendered himself at *Preston*, entirely relying on his Majesty's Mercy, so he is now resolved not to take any Measures, which may argue the least Diffidence of that Mercy, or of your Lordships Goodness; and therefore the said Lord confesses, he is guilty of the Treason wherewith he is charged in the said Articles; and after having thus freely acknowledged his Offence, he begs Leave to lay his Case before your Lordships, and humbly hopes, when the particular Circumstances are considered, it will not be thought to merit the most rigorous Punishment; but that both your Lordships, and the Honourable House of Commons, will look upon him as a proper Object of his Majesty's Clemency; and he humbly hopes, he may not be thought the less unworthy of Favour, in that he never before offended, nor was at any time privy to, or acquainted with any Design or Contrivance, to disturb or destroy the Established Government, the Laws or Religion of this Kingdom, but came unawares into this sudden and unpremeditated Action; for although he had met with publick Rumours and Reports of intended Invasions from Abroad, and Insurrections at Home, yet he never knew, or any other Way heard of any formed Design against the Government, till he was told the Night before, of a Meeting intended at *Plainfield* in *Northumberland*, on the sixth of *October* last; and being soon after informed, that almost all his Neighbours and Acquaintance had there met in Arms, he

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took a hasty and inconsiderate Resolution of joining them; nor was he in any sort prepared for such an Undertaking, having only some of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horses than he had constantly kept for several Years before; and nothing but the Report of so many of his Friends being engaged, could have hurried him on to an Enterprize so unaccountably rash and unjustifiable; and he is willing to hope, your Lordships will esteem it some Alleviation of his Crime, that, in a Commotion of that Nature, there was so little Violation of the Rights and Properties of those who opposed them; for he believes few Instances can be found, where such a Multitude continued so long in Arms, without doing greater Acts of Violence and Injustice. The said Lord cannot charge himself with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes it was thence owing, in some Measure, that there was shewn all along greater Marks of Moderation and Humanity, than is common in such a warlike and hostile Proceeding. The Suddenness of the Attack at *Preston*, without any previous Summons, admitted no Time for mediating a Submission, before the Loss of that Blood which was there unfortunately spilt; but after the Heat and Surprize of the first Action was over, a Cessation of Arms was desired, and upon the mutual Messages which then passed, the Officers sent from the General, encouraged them to believe, the surrendring themselves would be the ready Way to obtain the King's Mercy; and gave them repeated

peated Assurances, that they submitted to a Prince of the greatest Clemency in the World: Upon these Hopes and Assurances, they made a general Surrender of themselves to the King; and the said Lord may justly take notice to your Lordships, that as he was the last who took up Arms, so he was the first who procured a Meeting of the chief Persons among them, in order to lay them down; and cannot doubt but your Lordships, and the honourable House of Commons, will think it equitable to make some Distinction between an obstinate Resistance, and an early and humble Submission, whereby the Peace and Tranquillity of this Part of his Majesty's Dominions was intirely restored. Nature must have started at yielding themselves up to a certain and ignominious Death, when it must be acknowledged, that it was not impracticable for many of them to have escaped; and it was possible so great a Number grown desperate, might have obtained further Success, and thereby prevented the so speedy suppressing that Insurrection; but the said Lord, and the rest, having, with the utmost Confidence, relied on the Assurances of his Majesty's great Clemency, and the Hopes of Mercy, which had been given them from the Officers who commanded the Royal Forces, he is encouraged, with great Earnestness, to implore the Intercession of your Lordships, and the Honourable House of Commons, with his Majesty, for that Mercy, on which they wholly depended; and as he doth not know where Mercy was refus'd to those, who so early, and with so much Resignation, submitted to it; so he humbly hopes, your Lordships may be induced to think, that the Exercise

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cise of this divine Virtue by his Majesty, towards those who cast themselves at his Royal Feet, upon the sole Prospect and Expectation of it, will appear no less glorious to his Majesty, and prove no less advantageous to the future Quiet and Tranquillity of his Government, than any Examples of Justice in such a Case can be likely to do: And whatever Marks of Goodness and Favour his Majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest Ties of Gratitude, to demonstrate, in the future Course of his Life, the most constant and inviolable Duty to his Majesty, and the most real Esteem and Veneration for your Lordships, and the Honourable House of Commons.

Widdrington.

And the said Lord *Widdrington* being ask'd, if he had any thing further to say, he begg'd to be excused all Imperfections in his said Answer; said, he had been indisposed with the Gout in his Stomach, and was not able to employ himself in preparing his Answer till last Night, and finished it but this Morning; and humbly implored their Lordships Intercession to his Majesty for Favour and Mercy; and his Answer and Plea was recorded accordingly. And he withdrew.

Then the Earl of *Nithisdale* was brought to the Bar, and having there likewise kneeled, was acquainted with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*; and he also delivered in his Answer, which was read as follows:

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The Anſwer of William *Earl of* Nithiſdale, *to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Honourable the Knights, Citizens, and Burgeſſes of* Great Britain *in Parliament aſſembled.*

IT is with the greateſt Confuſion the ſaid Earl appears at your Lordſhips Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High Treaſon; he humbly begs Leave, in Extenuation of his Crime, to aſſure your Lordſhips, that he was always a zealous Aſſerter of the Liberties of his Country, and never engaged in forming or carrying on any Deſign, to ſubvert the ancient eſtabliſhed Government, and the good Laws of this Kingdom; but being ſummoned by thoſe entruſted with the Adminiſtration of the Government in *Scotland*, to appear at *Edinburgh*, and being aſſured if he went thither, he ſhould be made cloſe Priſoner, he did not obey the Summons; but in all humble Manner applied for their Indulgence, in diſpenſing with his being committed to Goal, offering to give any Bail for his peaceable and quiet Behaviour; which being refus'd, and being at that Time in ſo ill a State of Health, that a Confinement in *Edinburgh* Caſtle would have endangered his Life, he was forced to abſcond, and kept private, till ſeveral of the Perſons mentioned in the ſaid Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the ſaid Earl lay concealed; and then he inconſiderately and unfortunately (with four of his Domeſticks, and no other Perſon whatſoever) joined them, and proceed-

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ed in their Company to the Places in the ſaid Articles of Impeachment mentioned; but he knew nothing of the intended Inſurrection till they were actually in Arms. The ſaid Earl is deeply ſenſible of his great Offence, and not affecting Delay, nor being willing to give your Lordſhips, or the Honourable Houſe of Commons, any unneceſſary Trouble; he does, with a Sorrow equal to his Crime, confeſs, that he is guilty of the Treaſon in the ſaid Articles of Impeachment contained, and throws himſelf at his Majeſty's Feet, imploring his Royal Mercy; and to incline his Majeſty thereto, and induce your Lordſhips to recommend him as an Object thereof, he begs Leave to inform your Lordſhips, that when he, and the reſt that were with him at *Preſton*, had engaged in a Battle, a Ceſſation of Arms being agreed to, they had Intimations from his Majeſty's Officers, that if they ſubmitted, they might expect the King's Mercy; and Hiſtory abounding with Inſtances of Conditions ſtipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by ſuch Encouragement, together with the Conſideration of his Majeſty's known Clemency, to ſurrender themſelves Priſoners, whereby the Lives of great Numbers of his Majeſty's good Subjects were ſaved, which, by an obſtinate Reſiſtance, would inevitably have been deſtroyed; and therefore he moſt humbly begs your Lordſhips would be pleaſed to repreſent his Caſe to his Majeſty in the moſt favourable Manner; not doubting but by your Lordſhips powerful Interceſſion, he ſhall find, that as he performed the Duty of a good Chriſtian, in concurring to prevent the

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Effuſion of Blood, ſo he acted the Part of a wiſe Man, in relying upon a Mercy ſo extenſive as that of his Majeſty: And he preſumes, when the Honourable Houſe of Commons are apprized of the Nature of his Caſe, they will not interpoſe to prevent him from having a Share in the Benefit of that Mercy.

Nithiſdale.

And the ſaid Earl of *Nithiſdale* being ask'd, if he had any thing further to ſay; he ſaid, he had nothing but to implore the King's Mercy; and his Anſwer and Plea was recorded accordingly. And he withdrew.

Then the Earl of *Carnwath* was brought to the Bar, and having there likewiſe kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and asked the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he had no Anſwer in Writing, but deſired to throw himſelf on the King's Mercy, and humbly implored their Lordſhips Interceſſion to his Majeſty on his Behalf; and aſſured the Houſe, if the ſame were granted, he ſhould think himſelf obliged to live under the ſtricteſt Ties of Loyalty to his Majeſty; and as to the ſaid Articles, he ſaid he was guilty of the High Treaſon contain'd in the ſaid Articles of Impeachment againſt him; and the ſaid Plea was recorded accordingly. And he withdrew.

Then the Viſcount *Kenmure* was brought to the Bar, and having there kneeled alſo, was acquainted by the Lord Chancellor with the forementioned Order, and ask'd the ſame Queſtion as the Earl of *Derwentwater*.

He

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He ſaid he had no Anſwer in Writing; but was guilty of the Charge of High-Treaſon contained in the Articles of Impeachment againſt him; and begged the Houſe would interced with his Majeſty for Mercy; and his Plea was recorded accordingly. And he withdrew.

Then the Lord *Nairn* was brought to the Bar; and having there alſo kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and ask'd the ſame Queſtion as the Earl of *Derwentwater*.

He ſaid he threw himſelf upon the King's Mercy, add begged the Interceſſion of this Houſe to his Majeſty; and as to the Articles of Impeachment exhibited againſt him, he ſaid he was guilty of the High Treaſon contained in the ſaid Articles; and his Plea was recorded accordingly.

Then he deliver'd in a Petition at the Bar, and the ſame was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled.

The Humble Petition of William *Lord* Nairn,

Sheweth,

THAT your Petitioner was educated, and hath always continued a Proteſtant, according to the Diſcipline of the Church of *England*; and though, by reaſon of ſome miſtaken Principles, he unwarily imbibed in his tender Years, he did not in all reſpects conform to the late Revolution, lying under the leſs Neceſſity, for that he had married an Heireſs,

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Heireſs, in whom all the Right of your Petitioner's Eſtate is inveſted; and though he never took the Oaths, yet he always peaceably ſubmitted to, and lived quietly under the Government as by Law eſtabliſhed, until the breaking out of this Rebellion, in which your Petitioner was inadvertently involv'd; but not before the Lord *Mar*, and his Adherents, had for a conſiderable Time made themſelves Maſters of *Perth* and *Dunkeld*, and thereby ſurrounded your Petitioner's whole Eſtate, and came to your Petitioner's Houſe, lying in the middle between thoſe Places.

Your Petitioner heartily repents of this raſh Undertaking; and ſolemnly declares, he knew nothing of any previous Conſultations, or Conſpiracies, in Favour of the Pretender, before he actually appear'd in Arms; nor knew any thing about croſſing the *Forth*, until the Morning he was ſent over under *Mackintoſh*'s Command; and then was ſo far from approving of that Expedition, that though, to avoid the Imputation of Cowardice, he would hazard his own Perſon therein, your Petitioner ordered back all his Dependents, and was only attended by his Son and four Servants, who would not leave him in a time of Danger, though often deſired; nor was your Petitioner privy to any Deſigns of marching into *England*; for having been bred a Seaman, he had no Pretenſions to Knowledge in the Land Service.

Your Petitioner being now ſenſible of his Errors, hath pleaded guilty to the Articles of Impeachment of High Treaſon, exhibited againſt him by the Honourable Houſe of Commons, and thrown himſelf at his Majeſty's Feet,

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Feet, humbling beſeeching your Lordſhips, in Commiſeration of the deplorable Circumſtances of your Petitioner, and his twelve Children, to recommend him to his Majeſty for that Mercy, which, at the time of his Surrender, he was made to believe he might reaſonably expect.

This will lay your Petitioner, and his Poſterity, under the greateſt Obligations of Duty and Gratitude to his Majeſty, and bind them for ever to bleſs your Lordſhips, as the merciful Inſtruments of procuring ſuch a gracious Deliverance.

And your Petitioner ſhall ever pray, &c.

NAIRN.

And being asked if he had any thing further to ſay, he ſaid he had not, and withdrew.

The next Day the Lords ſent a Meſſage to the Commons, to acquaint them, that the ſix Lords had pleaded guilty to the Articles of Impeachment, which Pleas the Lords had ordered to be recorded. Upon receiving this Meſſage, the Commons reſolved, *nemine contradicente*, to go with their Speaker to the Bar of the Lords Houſe, and there demand Judgment againſt them; but by Reaſon of the King's coming to the Houſe that Day, it was deferr'd.

Paſſing Judgment againſt the Six Lords.

February the 2*d*, the Lords ſent another Meſſage to the Commons, to ſignify that they had appointed the Ninth of that Month to give Judgment againſt the ſix impeached Lords; on

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on which Day, about Eleven in the Forenoon, the ſaid Lords were brought from the *Tower*, as uſual, to the Court erected in *Weſtminſter-Hall*, the Commons being preſent.

When the Lords were placed in their proper Seats, and the Lord *High Steward* upon the *Wool-pack*, the Clerk of the Crown in the Court of Chancery, ſtanding before the Clerks Table, with his Face towards the State, having his Majeſty's Commiſſion to the Lord High Steward, made three Reverences towards his Grace, and on his Knees preſented the Commiſſion to him; after which, and uſual Reverences, the ſame was carried down to the Table; and then Proclamation for Silence being made in the uſual Manner, the Lord *High Steward* ſtood up, and, addreſſing himſelf to the Peers, ſaid, *His Majeſty's Commiſſion is going to be read, your Lordſhips are deſired to attend.* Hereupon all the Peers uncover'd themſelves, and they, and all others, ſtood up uncover'd, while the Commiſſion was reading; after which, the Serjeant at Arms ſaid, *God ſave the King.* Then the Herald, and Gentleman Uſher of the *Black Rod*, after three Reverences, kneeling, preſented the *White Staff* to his Grace; and then his Grace, attended by the Herald, Black-Rod, and Seal-Bearer, (making his proper Reverences towards the Throne) removed from the Wool-Pack to an Armed Chair, which was placed on the uppermoſt Step but one of the Throne, as it was prepared for that Purpoſe, and then ſeated himſelf in the Chair, and deliver'd the Staff to the Gentleman-Uſher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purſe on the Left. Then the Clerk of the Crown order'd

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the Serjeant at Arms, to make Proclamation for Silence, which he did accordingly; after which, another Proclamation was made, commanding the Lieutenant of the *Tower* of *London*, to bring forth his Priſoners to the Bar, according to the Order of the Houſe of Lords to him directed. Hereupon the Earl of *Derwentwater*, and the other five Lords, were brought to the Bar by the Deputy-Governour of the *Tower*, having the Ax carried before them by the Gentleman-Goaler, who ſtood with it on the Left Hand of the Priſoners, with the Edge turn'd from him.

The Priſoners, when they approach'd the Bar, (after kneeling) bowed to his Grace the Lord *High Steward*, and to the Houſe of Peers; which Compliment was return'd them by his Grace, and the Houſe of Peers. Then, by the Lord *High Steward*'s Command, were read, *Firſt*, The *Articles of Impeachment of High Treaſon*, exhibited by the Commons. *Secondly*, The Orders of the Houſe of Lords of the 19*th* of *January* laſt. *Thirdly*, The Anſwers of the Earl of *Derwentwater*, Lord *Widdrington*, and Earl of *Nithiſdale*, in Writing. *Fourthly*, The Anſwers of the Earl of *Carnwath*, and the Lord Viſcount *Kenmure*, and the Lord *Nairn*'s Petition.

Then the *High Steward* ſaid, My Lords, that are the Priſoners at the Bar, I am to acquaint your Lordſhips, that upon any Occaſion which ſhall be offered you to ſpeak for your ſelves, you are to direct your Speech to the Lords in general; and ſo is any other Perſon that ſhall have Occaſion to ſpeak to this Court; and then ſpoke as follows:

James

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James Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, you stand impeached of High Treason by the Commons of *Great Britain* in Parliament assembled; which Treason is contain'd in the Articles that have been lately read; to this you have severally pleaded Guilty, and are thereby convicted. What say you, *James* Earl of *Derwentwater*, why Judgment should not pass upon you according to Law?

Earl of Derwentwater. I Only humbly beg Leave of my Noble Peers, to repeat a few Circumstances mentioned in my Answer to the Articles of Impeachment, exhibited against me by the Honourable House of Commons.

But the Terrors of your Lordships just Sentence, which at once deprive me of my Life and Estate, and compleat the Misfortunes of my Wife and innocent Children, are so heavy upon my Mind, together with my Unexperience, that I am scarce able to alledge what may extenuate my Offence, if any thing can do it. I have confess'd my self Guilty; but, my Lords, that Guilt was rashly incurr'd, without any Premeditation, as I hope your Lordships will be convinced by one Particular. I beg leave to observe, I was wholly unprovided with Men, Horses, Arms, and other Necessaries, which, in my Situation, I could not have wanted, had I been privy to any formed Design. As my Offence was sudden, so my Submission was early; when his Majesty's Generals thought fit to demand Hostages, for securing the Terms of the Cessation, I voluntarily

ſtly offered my ſelf, without which the Ceſſation might poſſibly have proved ineffectual: And whilſt I continued Hoſtage, the great Character of his Majeſty's Clemency, and the repeated Encouragement I had to hope for Mercy, by ſurrendring to it, ſoon determined me; and I accordingly declared my Reſolution to remain with his Majeſty's Forces, and from that Time ſubmitted my ſelf to his Goodneſs, on which I ſtill entirely depend. I humbly hope to obtain the Mediation of your Lordſhips, and of the Honourable Houſe of Commons, in my behalf; ſolemnly proteſting my future Conduct ſhall ſhew me not altogether unworthy your generous Compaſſion for my Life, which is all I can beg of his Majeſty.

To which the Lord *High Steward* ſaid, My Lord *Derwentwater*, your Lordſhip's Voice hath not been perfectly heard to this End of the Court; therefore I ask you, whether you have pleaded any thing in Arreſt of Judgment? And he ſaid, No, my Lords.

Then the Lord *High Steward* ſaid, Lord *Widdrington*, what have you to ſay for your ſelf, why Judgment ſhould not paſs upon you according to Law?

Lord *Widdrington*. MY Lords, I have abandoned all Manner of Defence ever ſince I firſt ſurrender'd my ſelf to his Majeſty's Royal Clemency; and only now beg leave to repeat to your Lordſhips ſome Circumſtances of my unhappy Caſe, which I have already ſet forth in my Anſwer.

Your

Your Lordships see before you an unfortunate Man, who, after leading a private and retired Life for many Years, has, by one rash and inconsiderate Action, exposed himself and his Family, to the greatest Calamities and Misery, and is now upon the Point of receiving the severest Sentence directed by any of our *English* Laws.

I do protest to your Lordships, that I was never privy to any concerted Measures against his Majesty's Royal Person, or the established Government. As to the Insurrection in *Northumberland*, I only heard of it accidentally the Night before it happened; and being soon after informed, that all my Neighbours and Acquaintance had met in Arms, a Crowd of confused and mistaken Notions hurried me at once into a precipitate Resolution of joining them; a Resolution, which, I must own, I could never since calmly reflect upon, without part of that Confusion I find my self under, in the publick Acknowledgment of so much Rashness and Folly. After thus plunging out of my Depth, as unprepared for such an Enterprize, as the Action was unpremeditated, I cannot for my own Particular, upon the strictest Recollection, charge my self with any Violation of the Properties of my Fellow-Subjects; but, on the contrary, I always endeavour'd to encourage Humanity and Moderation, during the whole Course of our miserable Expedition; and, in order to make the best Atonement in my Power for the great Fault I had been guilty of, I can justly say, that I was in no small Degree instrumental in procuring a general Submission to his Majesty. But, my Lords, however willing or desirous either I, or any others, might

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be to put a ſpeedy End to thoſe unfortunate Troubles; Self-preſervation, the firſt and moſt powerful Law of Nature, would have rendered the Propoſal vain and fruitleſs, had not the Officers, who commanded the Royal Forces, given us Hopes of Mercy, and aſſured us, we ſubmitted to a Prince of the greateſt Clemency in the World. Theſe Hopes, and this Aſſurance, anſwered the ſtrongeſt Objections, overcame all remaining Difficulties, and gave the finiſhing Stroke to a general Surrender, whereby the further Effuſion of *Britiſh* Blood was prevented, and a perfect Tranquillity reſtored to theſe Parts of his Majeſty's Dominions.

My Lords, as this my firſt Attempt was raſh and unpremeditated, as I always uſed and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obſtinately perſiſt in my Fault, but was the firſt who propoſed an early Submiſſion to his Majeſty, I humbly hope my unhappy Caſe, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raiſe a generous Compaſſion in your Lordſhips, and the Honourable Houſe of Commons; and I moſt earneſtly entreat both your Lordſhips, and that Honourable Houſe, to become Interceſſors with his Majeſty in my behalf, for that Mercy, which I was encouraged to hope for when I firſt ſurrender'd, and which I have ever ſince, with the utmoſt Confidence, relied upon.

I have only to add my moſt ſolemn Aſſurance before this Auguſt Aſſembly, that no future time ſhall ever find me wanting in the moſt inviolable Duty and Gratitude, to that merciful Prince, who gives me my Life, and re-

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reſtores a Father to five miſerable and diſtreſſed Orphans; and I ſhall always retain the higheſt Eſteem and Veneration for your Lordſhips, and the honourable Houſe of Commons.

To which the Lord *High Steward* replied, Lord *Widdrington*, for greater Certainty, I ask your Lordſhip, whether you have pleaded any thing in Arreſt of Judgment? Who anſwered, No.

Lord *High Steward*. *William* Earl of *Nithiſdale*, what hath your Lordſhip to ſay for your ſelf, why Judgment ſhould not paſs upon you according to Law?

Lord *Nithiſdale*. MY Lords, I have confeſſed my ſelf guilty, relying only on his Majeſty's Mercy; and I beg leave to aſſure your Lordſhips, I was never privy to any Plot or Deſign againſt his Majeſty's Perſon or Government, and was unprovided with any Neceſſaries for ſuch a Purpoſe; but raſhly and inconſiderately, with only four of my Servants, joined thoſe who appeared in Arms in my Neighbourhood, and was one of the laſt who went unto them.

At *Preſton*, my Lords, his Majeſty's Generals gave great Hopes and Encouragement to believe, that ſurrendring to his Majeſty's Mercy, was the ready Way to obtain it; with repeated Aſſurances, that his Majeſty was a Prince of the greateſt Clemency.

Upon thoſe Hopes and Aſſurances, I ſubmitted my ſelf, and ſtill entirely depend on his Majeſty's Goodneſs; earneſtly beſeeching your

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Lordſhips, and the Honourable Houſe of Commons, to intercede with his Majeſty on my Behalf.

And I ſolemnly promiſe your Lordſhips, I ſhall, during the Remainder of my Life, pay the utmoſt Duty and Gratitude to his moſt gracious Majeſty, and the higheſt Veneration and Reſpect to your Lordſhips, and the Honourable Houſe of Commons.

Lord *High Steward.* I muſt alſo ask your Lordſhip, (your Lordſhip's Voice not reaching thus far) whether you have pleaded any thing in Arreſt of Judgment? Who anſwer'd, No, my Lords, I have not.

Lord *High Steward.* Lord *Carnwath*, what have you to ſay for your ſelf, why Judgment ſhould not paſs upon you according to Law?

Lord *Carnwath.* MY Lords, I ſhall not trouble this great Aſſembly with a Repetition of what I ſaid, when formerly before your Lordſhips, and his Majeſty's Council.

I hope theſe noble Lords entertain that favourable Opinion of my ſincere Dealing then, as to believe, that Want of Experience and Knowledge of the Laws, was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing I can hope or wiſh for, is his Majeſty's Mercy. He has the Character of a merciful Prince; ſhould it pleaſe him to think me a proper Object for it, (though I muſt confeſs my ſelf a very unworthy one) all I can

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can ſay, my Lords, is, that the Remainder of my Life ſhall convince his Majeſty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the Peerage, now expecting your Lordſhips Judgment as to Life or Death: Should it be for Life, my Demeanour and Carrriage for the future will be ſuch, as none of your Lordſhips ſhall be aſhamed of having ſhew'd me Compaſſion; but ſhould it be for Death, God's Will be done. To my laſt Hour, I ſhall pray for the Nation's, and your Lordſhip's Proſperity; having this Comfort in my preſent Diſtreſs, that your Lordſhips are my Judges at this Tribunal. And yet a greater Comfort have I, that I am ſoon to appear before a greater, where I can't deſpair of finding Mercy and Forgiveneſs for all my Sins.

I beg God Almighty's Pardon for them; I have already ask'd his Majeſty's, and I do it now. And I do humbly beg leave once more, and perhaps the laſt Occaſion that ever I ſhall have, to deſire that your Grace, this noble Houſe, and the Honourable Commons of *Great Britain*, who are now here, would intercede with his Majeſty for me. I take my Leave of your Lordſhips, and wiſh you all Happineſs.

Lord *High Steward*. Does your Lordſhip offer any thing in Arreſt of Judgment? Who anſwer'd, No, my Lords.

Lord *High Steward*. Lord *Kenmure*, what have you to ſay for your ſelf, why Judgment ſhould not paſs upon you according to Law?

Lord

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Lord *Kenmure*. MY Lords, I am truly ſenſible of my Crime, and want Words to expreſs my Repentance. God knows I never had any perſonal Prejudice againſt his Majeſty, nor was I ever acceſſary to any previous Deſign againſt him. I humbly beg my noble Peers, and the Honourable Houſe of Commons, to intercede with the King for Mercy to me, that I may live to ſhew my ſelf the dutifulleſt of his Subjects; and to be the Means to keep my Wife, and four ſmall Children, from ſtarving; the Thoughts of which, with my Crime, makes me the moſt unfortunate of all Gentlemen.

Lord *High Steward*. My Lord, your Voice not being heard to this End of the Court, I would know whether, in what you have ſaid, you have offered any thing in Arreſt of Judgment? Who likewiſe anſwer'd, No, my Lords.

Lord *High Steward*. Lord *Nairn*, what have you to ſay for your ſelf, why Judgment ſhould not paſs upon you according to Law?

Lord *Nairn*. I Am very ſenſible how unfit I am to plead my own Cauſe before your Grace, (my Lord *High Steward*) and this Auguſt Aſſembly; and therefore, though I could ſay much to extenuate the Crime for which I ſtand impeached; yet I chuſe rather to lay my whole Streſs upon the King's Mercy, for which he is ſo renowned, and which I was put in Hopes of, at the time of my Surrender. In Conſideration whereof, and in Compaſſion to an afflicted Wife and Twelve Children, I ſtill hope,

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hope, by the Mediation of your Grace, my noble Lords, and the Honourable Houſe of Commons, I may obtain it; ſolemnly proteſting, that, in Gratitude for ſo ſignal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his moſt gracious and ſacred Majeſty King *George*.

Lord *High Steward*. My Lord, for greater Certainty, I ask your Lordſhip, whether you have offer'd any thing in Arreſt of Judgment? Who alſo anſwer'd, No, my Lords.

After Proclamation commanding Silence, the Lord High Steward *made the following Speech:*

James Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, *William* Lord *Nairn*,

You ſtand impeached, by the Commons of *Great Britain* in Parliament aſſembled, of High Treaſon, in traiterouſly imagining, and compaſſing the Death of his moſt ſacred Majeſty; and in conſpiring for that End, to levy a bloody and deſtructive War againſt his Majeſty, in order to depoſe and murder him; and in levying War accordingly, and proclaiming a Pretender to his Crown, to be King of theſe Realms.

Which Impeachment, though one of your Lordſhips, in the Introduction to his Plea, ſuppoſes to be out of the ordinary and common Courſe of the Law and Juſtice, is yet as much a Courſe of Proceeding according to the common Law, as any other whatſoever.

If

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If you had been indicted, the Indictment must have been removed, and brought before the House of Lords, (the Parliament sitting). In that Case you had ('tis true) been accused only by the Grand Jury of one County; in the present, the whole Body of the Commons of *Great Britain*, by their Representatives, are your Accusers.

And this Circumstance is very observable, (to exclude all possible Supposition of Hardship, as to the Method of proceeding against you) that however all great Assemblies amongst us are apt to differ on other Points, you were impeached by the unanimous Opinion of the House of Commons, (not one contradicting).

They found themselves, it seems, so much concerned in the Preservation of his most truly sacred Majesty, and the Protestant Succession, (the very Life and Soul of these Kingdoms) that they could not omit the first Opportunity of taking their proper Part, in order to so signal and necessary an Act of his Majesty's Justice.

And thus the whole Body politick of this free Kingdom has, in a manner, rose up in its own Defence, for the Punishment of those Crimes, which, 'twas rightly apprehended, had a direct Tendency to the everlasting Dissolution of it.

To this Impeachment, you have severally pleaded, and acknowledged your selves Guilty of the High Treason therein contain'd.

Your Pleas are accompanied with some Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part

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Part of which; as ſome of the Circumſtances ſaid to have attended your Surrender, (ſeeming to be offer'd rather as Arguments only for Mercy, than any thing in Mitigation of your preceding Guilt) is not proper for me to take Notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I ſhould take this Occaſion to make ſome Obſervations to your Lordſhips upon it; to the End, that the Judgment to be given againſt you, may clearly appear to be Juſt and Righteous, as well as Legal; and that you may not remain under any fatal Error, in reſpect of a greater Judicature, by reflecting with leſs Horror and Remorſe on the Guilt you have contracted, than it really deſerves.

It is alledg'd by ſome of your Lordſhips, that you engaged in this Rebellion without previous Concert or Deliberation, and without ſuitable Preparations of Men, Horſes, and Arms.

If this ſhould be ſuppoſed true, on ſome of your Lordſhips averring it; I deſire you to conſider, that as it exempts you from the Circumſtance of contriving this Treaſon, ſo it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it ſhews, that your Inclinations to rebel were ſo well known, (which could only be from a continued Series of your Words and Actions) that the Contrivers of that horrid Deſign depended upon you, and therein judged rightly; that your Zeal to engage in this Treaſon was ſo ſtrong, as to carry you into it on the leaſt Warning, and the very firſt Invitation;

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tation; that you would not excuſe your ſelves by want of Preparation, as you might have done; and that rather than not have a Share in the Rebellion, you would plunge your ſelves into it almoſt naked, and unprovided for ſuch an Enterprize; in ſhort, that your Men, Horſes, and Arms; were not ſo well prepared as they might, and would have been, on longer Warning; but your Minds were.

It is alledg'd alſo, as an Extenuation of your Crime, that no cruel or harſh Action (I ſuppoſe is meant, no Rapine, Plunder, or worſe) has been committed by you.

This may, in Part only, be true. But then your Lordſhips will at the ſame time conſider, that the laying waſte a Tract of Land bears but a little Proportion in Point of Guilt, compared with that Crime, of which you ſtand convicted; an open Attempt to deſtroy the beſt of Kings, to ruin the whole Fabrick, and raze the very Foundations of a Government, the beſt ſuited of any in the World, to perfect the Happineſs, and ſupport the Dignity of humane Nature: The former Offence cauſes but a Miſchief, that is ſoon recover'd, and is uſually pretty much confin'd; the latter, had it ſucceeded, muſt have brought a laſting and univerſal Deſtruction on the whole Kingdom.

Beſides, much of this was owing to Accident; your March was ſo haſty, partly to avoid the King's Troops, and partly from a vain Hope, to ſtir up Inſurrections in all the Counties you paſſed through, that you had not Time to ſpread Devaſtation, without deviating from your main, and, as I have obſerv'd, much worſe Deſign.

Far-

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Farther, 'tis very ſurprizing that any concern'd in this Rebellion, ſhould lay their ingaging in it, on the Government's doing a neceſſary, and uſual Act in like Caſes, for its Preſervation; the giving Orders to confine ſuch as were moſt likely to join in that Treaſon. 'Tis hard to believe that any one ſhould Rebel, merely to avoid being reſtrain'd from rebelling; or that a gentle Confinement would not much better have ſuited a crazy State of Health, than the Fatigues and Inconveniencies of ſuch long and haſty Marches in the depth of Winter.

Your Lordſhips riſing in Arms therefore, has much more juſtify'd the Prudence and Fitneſs of thoſe Orders, than thoſe Orders will in any wiſe ſerve to mitigate your Treaſon. Alas! happy had it been for all your Lordſhips, had you fallen under ſo indulgent a Reſtraint!

When your Lordſhips ſhall in good earneſt, apply your ſelves to think impartially on your Caſe, ſurely you will not your ſelves believe, that 'tis poſſible, in the Nature of the thing, to be engaged, and continue ſo long engaged, in ſuch a difficult and laborious Enterprize, through Raſhneſs, Surprize, or Inadvertency: Or that, had the Attack at *Preſton* been leſs ſudden, (and conſequently the Rebels better prepared to receive it) your Lordſhips had been reduced the ſooner, and with leſs, if not without any Bloodſhed.

No, my Lords; theſe, and ſuch like, are artful Colourings, proceeding from Minds fill'd with Expectation of continuing in this World; and not from ſuch as are preparing for their Defence before a Tribunal, where the Thoughts of

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of the Heart, and the true Springs and Cauſes of Actions, muſt be laid open.

And now, my Lords, having thus removed ſome falſe Colours you have uſed: To aſſiſt you yet farther in that neceſſary Work, of thinking on your great Offence as you ought, I proceed to touch upon ſeveral Circumſtances, that ſeem greatly to aggravate your Crime, and which will deſerve your moſt ſerious Conſideration.

The divine Virtues ('tis one of your Lordſhips own Epithets) which all the World, as well as your Lordſhips, acknowledge to be in his Majeſty, and which you now lay Claim to, ought certainly to have with-held your Hands from endeavouring to depoſe, to deſtroy, to murder that moſt excellent Prince; ſo the Impeachment ſpeaks, and ſo the Law conſtrues your Actions; and this is not only true in the Notion of Law, but almoſt always ſo in Deed and Reality: 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves. Had you ſucceeded, his Majeſty's Caſe would, I fear, have hardly been an Exception to that general Rule, ſince 'tis highly improbable, that Flight ſhould have ſaved any of that illuſtrious and valiant Family.

'Tis a farther Aggravation of your Crime, that his Majeſty, whom your Lordſhips would have dethron'd, affected not the Crown by Force, or by the Arts of Ambition, but ſucceeded peaceably and legally to it; and on the Deceaſe of her late Majeſty without Iſſue, became undoubtedly the next in Courſe of Deſcent, capable of ſucceeding to the Crown,

by

by the Law and Conſtitution of this Kingdom, as it ſtood declared ſome Years, before the Crown was expreſly limited to the Houſe of *Hanover*. This Right was acknowledg'd, and the Deſcent of the Crown limited or confirmed accordingly, by the whole Legiſlature, in two ſucceſſive Reigns; and more than once in the latter; which your Lordſhips Accomplices are very far from allowing, would byaſs the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Perſons might, with a good Conſcience, endeavour to ſubvert ſuch a Settlement, by running to tumultuary Arms; and by intoxicating the Dregs of the People with contradictory Opinions, and groundleſs Slanders; or that God's Providence would ever proſper ſuch wicked, ſuch ruinous Attempts?

Eſpecially if, in the next Place, it be conſidered, that the moſt fertile Inventions on the Side of the Rebellion, have not been able to aſſign the leaſt Shadow of a Grievance, as the Cauſe of it. To ſuch poor Shifts have they been reduced on this Head, that, for want of better Colours, it has been objected, in a ſolemn Manner by your Lordſhips Aſſociates, to his Majeſty's Government, that his People do not enjoy the Fruits of Peace, as our Neighbours have done, ſince the laſt War. Thus they firſt rob us of our Peace, and then upbraid us that we have it not. 'Tis a monſtrous Rebellion that can find no Fault with the Government it invades, but what is the Effect of the Rebellion it ſelf.

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Your Lordſhips will likewiſe do well to conſider, what an additional Burthen your Treaſon has made neceſſary on the People of this Kingdom, who wanted, and were about to enjoy ſome Reſpite: To this End, 'tis well known, that all new, or Encreaſe of Taxes, were the laſt Year carefully avoided; and his Majeſty was contented to have no more Forces, than were juſt ſufficient to attend his Perſon, and ſhut the Gates of a few Garriſons.

But what his Majeſty thus did for the Eaſe and Quiet of his People, you moſt ungratefully turn'd to his Diſadvantage; by taking Encouragement from thence, to endanger his, and his Kingdoms Safety, and to bring Oppreſſion on your Fellow-Subjects.

Your Lordſhips obſerve, I avoid expatiating on the Miſeries of a Civil War; a very large and copious Subject: I ſhall but barely ſuggeſt to you on that Head, that whatever thoſe Calamities may happen to be in the preſent Caſe, all who are at any Time, or in any Place, Partakers in the Rebellion, (eſpecially Perſons of Figure and Diſtinction) are, in ſome Degree, reſponſible for them; and therefore your Lordſhips muſt not hold your ſelves quite clear from the Guilt of thoſe Barbarities which have been lately committed, by ſuch as are engaged in the ſame Treaſon with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby expoſing many Thouſands to Cold and Hunger, in this rigorous Seaſon.

I muſt be ſo juſt to ſuch of your Lordſhips, as profeſs the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treaſon, which the others

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others had not; in that 'twas evident, Succeſs on your Part muſt for ever have eſtabliſhed Popery in this Kingdom; and that, probably, you could never have again ſo fair an Opportunity.

But then, good God! how muſt thoſe Proteſtants be cover'd with Confuſion, who enter'd into the ſame Meaſures, without ſo much as capitulating for their Religion, (that ever I could find from any Examination I have ſeen or heard) or ſo much as requiring, much leſs obtaining, a frail Promiſe, that it ſhould be preſerved, or even tolerated.

It is my Duty to exhort your Lordſhips thus, to think of the Aggravations, as well as the Mitigations (if there be any) of your Offences; and if I could have the leaſt Hopes, that the Prejudices of Habit and Education would not be too ſtrong for the moſt earneſt and charitable Entreaties; I would beg you not to rely any longer on thoſe Directors of your Conſciences, by whoſe Conduct you have, very probably, been led into this miſerable Condition; but that your Lordſhips would be aſſiſted by ſome of thoſe Pious and Learned Divines of the Church of *England*, who have conſtantly bore that infallible Mark of ſincere Chriſtians, univerſal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you, (and ſorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which muſt be the ſame that is uſually given againſt the meaneſt Offender in the like Kind.

The moſt ignominious and painful Parts of it, are uſually remitted by the Grace of the Crown, to Perſons of your Quality; but the

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Law in this Caſe being deaf to all Diſtinctions of Perſons, requires I ſhould pronounce, and accordingly it is adjudg'd by this Court,

'That you *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithiſdale*, *Robert* Earl of *Carnwath*, *William* Viſcount *Kenmure*, and *William* Lord *Nairn*, and every of you, return to the Priſon of the *Tower*, from whence you came; from thence you muſt be drawn to the Place of Execution; when you come there, you muſt be hang'd by the Neck, but not till you be dead; for you muſt be cut down alive, then your Bowels muſt be taken out, and burnt before your Faces; then your Heads muſt be ſever'd from your Bodies, and your Bodies divided each into four Quarters; and theſe muſt be at the King's Diſpoſal.

And God Almighty be merciful to your Souls!

And then the Houſe adjourn'd to the Houſe above.

Theſe Lords being thus ſentenc'd on the 9*th* of *February*, were carried back to their ſeveral Apartments in the Tower; where they remain'd till the 18*th* of *February*; at which Time, Orders were ſent both to the Lieutenant of the *Tower*, and to the Sheriffs of *London* and *Middleſex*, for their Executions. Great Solliciations having in the mean Time been made in Favour of them; which Interceſſions did not only reach the Court, but came down to the Two Houſes of Parliament, and Petitions were deliver'd in both, which, being back'd by ſome Members, occaſion'd Debates: That in

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In the Commons Houſe roſe no higher than to occaſion a Motion for Adjournment, and thereby, to avoid the Hopes or Effect of any further Interpoſition there, which the Party on the Side of the Queſtion carried by a Majority of Seven only; the Reaſon of which was, that many who us'd to Vote with them, ſtrangely influenced by the Word MERCY, voted with the contrary Party. But the Matter in the Houſe of Peers was carried on with more Succeſs; where their Petitions were deliver'd, and ſpoke to; and the Queſtion put, whether the ſame ſhould be receiv'd and read, which was carried by Nine or Ten Voices.

After reading the Petitions, the next Queſtion was, whether, in Caſe of an Impeachment, the King had Power to Reprieve? Which being likewiſe carried in the Affirmative, was followed by a Motion to Addreſs his Majeſty, humbly to deſire him to grant a Reprieve to the Lords, who lay under Sentence of Death. This was ſtrenuouſly oppoſed, tho' to no other Purpoſe, than to obtain the following Clauſe, *viz.* *To reprieve ſuch of the condemned Lords as deſerve his Mercy; and that the Time of the Reſpite ſhould be left to his Majeſty's Diſcretion*; with which Amendments the Addreſs was carried by a Majority of Five Voices; and received the following Anſwer from the King:

> *That on this, and other Occaſions, he would do what he thought moſt conſiſtent with the Dignity of his Crown, and the Safety of his People.*

So that this Struggle ended in the Execution of two of theſe condemned Lords, and the

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Removal of ſome others from their Employments, who had been moſt ſollicitous for their Preſervation. For according to a Reſolution taken in Council on the ſame Day the Addreſs was deliver'd, *viz.* the 23*d* of *February*, Orders were ſent for the Execution of the Earl of *Derwentwater*, and the Lord Viſcount *Kenmure*; and the Earl of *Nithiſdale* apprehending himſelf included in the Warrant, made his Eſcape he Evening before, in a Woman's Riding-Hood, which he found Means to do, from a Viſit his Mother, and ſome other Relations, then gave him.

An Account of the Executions of James *Earl of* Derwentwater, *and* William *Viſcount* Kenmure, *on the* 24th *of* February, 1615-16.

IN the Morning, three ſtrong Detachments of the Life Guards, Horſe Grenadiers, and Foot Guards, marched from *White-Hall* to *Tower-Hill*, where they took Poſt round the Scaffold erected there. About Ten a Clock in the Forenoon, the ſaid Lords were brought from the Tower of *London* in two Hackney Coaches, and receiv'd by the Sheriffs of *London*, &c; at the Bar, and alighting at ſome Diſtance from the Scaffold, were thence conducted to the *Tranſport-Office* upon *Tower-Hill*, which was prepared for them: There they had ſeparate Rooms for their private Devotions; and were ask'd what Friends they deſired ſhould be admitted to them; who were called in accordingly.

The Lord *Derwentwater* having been about an Hour in his Room with his Friends, ſent Notice to the Sheriffs he was ready, and of his

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his own Accord came out of his Room; and Sir *John Fryer* walk'd before him to the Scaffold: When he came on, Sir *John Fryer* offered him all the Time he pleas'd for his Preparation; and ask'd him, if his Lordſhip had any Paper to leave behind. He anſwered, he ſhould only read ſome Prayers, *&c.* out of two ſmall Books; that then he deſired he might read a Paper which he had drawn up, and repeat the aforeſaid Prayers, *&c.* and then he ſhould be ready; which the Sheriff comply'd with. Accordingly he kneeled down, and ſpent ſome Time in his Devotion; and getting up, he took a Paper out of his Pocket, which he read to thoſe that were preſent.

'BEING in a few Minutes to appear before the Tribunal of God, where, tho' moſt unworthy, I hope to find Mercy, which I have not found from Men now in Power: I have endeavour'd to make my Peace with his Divine Majeſty, by moſt humbly begging Pardon for all the Sins of my Life: And I doubt not of a merciful Forgiveneſs, thro' the Merits of the Paſſion and Death of my Saviour Jeſus Chriſt; for which End, I earneſtly deſire the Prayers of all good Chriſtians.

'After this, I am to ask Pardon of thoſe, whom I might have ſcandalized by pleading Guilty at my Trial. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading Guilty was but the Conſequence of having ſubmitted to Mercy; and many Arguments were uſed to prove, there was nothing of Moment in ſo doing; among others, the univerſal Pra-

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'dice of Signing Leaſes, whereof the Preambles run in the Name of the Perſon in Poſſeſſion.

'But I am ſenſible, that in this I have made 'bold with my Loyalty, having never any o'ther but King *James* the Third, for my 'Rightful and Lawful Sovereign; him I had 'an Inclination to ſerve from my Infancy, 'and was moved thereto by a natural Love 'I had to his Perſon, knowing him to be ca'pable of making his People happy: And 'though he had been of a different Religion 'from mine, I ſhould have done for him all 'that lay in my Power, as my Anceſtors have 'done for his Predeceſſors; being thereunto 'bound by the Laws of God and Man.

'Wherefore if in this Affair I have acted 'raſhly, it ought not to affect the Innocent: I 'intended to wrong no Body, but to ſerve my 'King and Country, and that without Self'Intereſt; hoping, by the Example I gave, to 'have induced others to their Duty; and God, 'who ſees the Secrets of my Heart, knows I 'ſpeak Truth. Some Means have been pro'poſed to me for ſaving my Life, which I 'look'd upon as inconſiſtent with Honour and 'Conſcience, and therefore I rejected them; 'for, with God's Aſſiſtance, I ſhall prefer any 'Death to the doing a baſe, unworthy Action. 'I only wiſh now, that the laying down my 'Life, might contribute to the Service of my 'King and Country, and the Re-eſtabliſhment 'of the ancient and fundamental Conſtitution 'of theſe Kingdoms, without which no laſting 'Peace, or true Happineſs, can attend them; 'then I ſhould indeed part with Life even 'with Pleaſure; As it is, I can only pray, that

'theſe

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'these Bleſſings may be beſtowed upon my dear 'Country; and ſince I can do no more, I be-'ſeech God to accept of my Life as a ſmall Sa-'crifice towards it.

'I die a *Roman Catholick*; I am in perfect 'Charity with all the World, I thank God for it, 'even with thoſe of the preſent Government, who 'are moſt inſtrumental in my Death. I freely 'forgive ſuch as ungenerouſly reported falſe 'things of me; and I hope to be forgiven the 'Treſpaſſes of my Youth, by the Father of 'infinite Mercy; into whoſe Hand I commend 'my Soul.

JA. DERWENTWATER.

'*P. S.* If that Prince who now governs, had 'given me my Life, I ſhould have thought my 'ſelf obliged never more to have taken up 'Arms againſt him.

Sir *John Fryer*. My Lord, I deſire your Lordſhip would let me have your Paper.

Lord *Derwentwater*. I have ſent a Copy of it to my Friends. Then he deliver'd the ſame to Sir *John Fryer*: After which, he repeated ſeveral penitential Portions of Scripture, as follow, out of the aforeſaid Books: *Have Mercy upon me, O God! according to thy Loving-kindneſs, according unto the Multitude of thy tender Mercies, blot out my Tranſgreſſions. O Lord! thy Will be done. The Lord giveth, and the Lord taketh away, and bleſſed be the Name of the Lord. Lord! thy Will be done on Earth, as it is done in Heaven. Lord! thy Will be done on Earth, as it is done in Heaven. Lord! thy Will be done on Earth, as it is done in Heaven. Give me Patience, that I may ſuffer as becomes a Chriſtian, and thy Diſciple.* Then turning to the Executioner, ſaid,

May

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May I take off my Wig? Was anſwer'd by him, that he muſt, and accordingly did.

Executioner. My Lord, muſt I have your Hat and Wig?

Lord *Derwent.* Yes.

Lord *Derwent.* I forgive all that are concerned in my Execution, and I forgive all the World.

Execut. I ask your Lordſhip Forgiveneſs.

Lord *Derwent.* With all my Heart: I forgive all my Enemies, I forgive the moſt malicious of them, and I do forgive you.

Then the Lord *Derwentwater* made ſome ſhort Ejaculation to himſelf.

Execut. Hath your Lordſhip any thing to give to me?

Lord *Derwent.* You will find ſomething for you in my Pocket, (which were two half Broad Pieces) and I have given that Gentleman (pointing to him who held his Hat and Wig) ſomewhat more for you. Let me lie down once, to ſee how the Block fits me; which he did. Then kneeling down again, and making a ſhort Prayer with the Executioner, he aroſe, and undreſs'd himſelf for Execution, the Executioner aſſiſting him. After which, he deſir'd the Executioner to take Notice, that when he had heard him ſay, *Sweet Jeſus,* that then he ſhould do his Office ſo ſoon as he pleas'd. After which, his Lordſhip laid himſelf down upon the Block, and ſaid, I forgive my Enemies, and hope that God will forgive me; and then turning his Head up towards the Executioner, ſaid, after the third Time I cry, *Sweet Jeſus,* ſtrike then, and do what is moſt convenient for you.

Lord

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Lord *Derwent*. *Sweet Jeſus! receive my Spirit. Sweet Jeſus! be merciful to me. Sweet Jeſus!* and ſeem'd to be going on, when the Executioner broke his Sentence, by ſevering his Lordſhip's Head from his Body, which he did at one Stroke. Then the Executioner took up the Head, and at the ſeveral Quarters of the Scaffold, elevated it with both his Hands, crying with a loud Voice, *Behold the Head of a Traytor, God ſave King GEORGE.* When he had ſo done, his Friends not being provided with Hearſe or Coffin, Sir *John Fryer* ordered the Body to be wrapt up in black Bayes, to be carry'd to a Hackney-Coach, and deliver'd to his Friends, one of which had wrapt up his Head in a Handkerchief. And when the Scaffold was decently clear'd, and freſh Bayes laid on the Block, and Saw-Duſt ſtrew'd, that none the Blood appear'd;

Then the Lord Viſcount *Kenmure* was by Sir *John Ward* ſent up to Sir *John Fryer*, who tarry'd on the Stage all the Time; and being conducted to the Scaffold, Sir *John* addreſs'd himſelf to his Lordſhip after this Manner:

Sir *John Fryer*. My Lord, Has your Lordſhip any Perſon to aſſiſt you?

Lord *Kenmure*. There are two Clergymen, and ſome Friends below; which Sir *John Fryer* order'd to be call'd up, and came accordingly.

Sir *John Fryer*. My Lord, What are their Names?

Lord *Ken*. Mr. *Sharp*, &c.

Sir *John Fryer*. Hath your Lordſhip any Paper to leave?

Lord *Ken*. No.

Then

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Then his Lordſhip, with the two Clergymen, and the reſt of his Friends, retired to the South Side of the Stage, where they join'd together in Penitential Prayers, and others, proper to the Occaſion, taken out of a written Book; and after thoſe ended, then out of a printed Book. After which, Lord *Kenmure* turned himſelf a ſmall Space to his private Devotion; then the aforeſaid Clergymen, with a recommendatory Prayer, and a *Requiem*, concluded his Lordſhip's Devotions.

Sir *John Fryer*. Hath your Lordſhip had as much Time as you deſire? Or does your Lordſhip deſire any more? I will wait on your Lordſhip as long as you pleaſe.

Lord *Ken*. No, Sir.

Sir *John Fryer*. Your Lordſhip is at your Liberty. Hath your Lordſhip any thing in particular to ſay?

Lord *Ken*. No, I have not.

Execut. My Lord, what I do, is to ſerve the Nation; do you forgive me?

Lord *Ken*. I do, and he gave the Executioner eight Guineas.

Execut. You have nothing againſt me?

Lord *Ken*. No.

Then my Lord *Kenmure*, of his own Accord, pull'd off his Coat and Waſt-Coat, and one of his Friends put on a white Linen-Cap; the Executioner ſtepp'd up to him, and turned down the Collar of his Shirt, for more Conveniency of the Execution; and addreſs'd himſelf thus to his Lordſhip:

Execut. My Lord, will you be pleas'd to try the Block?

Lord

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Lord *Ken.* Give me leave, and I'll give you no Sign: upon which his Lordſhip laid down his Head upon the Block, and ſpread forth his Hands, and the Executioner performed his Office. Then taking up the Head, he ſaid, *Behold the Head of a Traytor*, &c. After which, his Friends convey'd his Body into a Hearſe, which was provided for that Purpoſe.

The Earl of *Derwentwater*'s Body was carried to one *Metcalf*'s a Surgeon, to be embalmed; and with the Head, was ſaid afterwards to be interred at *Dilſton*, the Seat of that Family in *Northumberland*.

The Viſcount *Kenmure*'s, was brought to an Undertakers in *Fleetſtreet*; and afterwards ſent to be buried with his Anceſtors in *Scotland*.

There was a Letter of this Lord's to the Pretender, ſaid to be found in his Pocket; wherein he recomends to him the Care of his Children, *&c.* but as we cannot warrant it to be genuine, we chuſe to omit it.

The other three Lords under Sentence of Death, were ſoon after farther repriev'd; and ſo from time to time, till we ſhall ſay more of them in the Sequel of this Hiſtory. The next Particular, is the Trial of the Earl of *Winton*.

The

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The TRIAL of George *Earl of* Winton *for High Treaſon, in the Court erected in* Weſtminſter-Hall, *&c.*

HAving ſaid, that the Articles of Impeachment were read againſt the Earl of *Winton*, the ſame Day that they were read againſt the other ſix Lords; at which Time, he acquainted the Houſe, that he was unprepared, and very ignorant of the Forms of their Lordſhips Judicature, and deſired he might have a Copy of the ſaid Articles, and ſuch Time to Anſwer as the Houſe ſhould think fit; and that Council might be aſſign'd to aſſiſt him. He was directed to withdraw; and being accordingly withdrawn, the Houſe took his Requeſts into Conſideration; and ordered, that his Lordſhip ſhould be allowed a Copy of the ſaid Articles of Impeachment, and Time till *Saturday* following, to put in his Anſwer thereunto; and that Council ſhould be aſſign'd him, in order to aſſiſt him in preparing his Anſwer, and likewiſe in his Defence in Matters of Law.

Then his Lordſhip was called in again, and the Lord Chancellor acquainted him with the ſaid Order; and that the Houſe expected he ſhould name ſuch Council as he deſired to have. To which he anſwered, that no Body was allowed to come to him; he was a Stranger, and unprepared, and deſired to be allowed Time to name his Council. Then his Lordſhip being again withdrawn.

After

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After ſome Time, he was again called in, and the Lord Chancellor, by Order of the Houſe, acquainted him, that the Houſe was pleaſed, beſides Council, to allow him a Sollicitor, and to give him Leave to name whom he deſired to come to him this Evening, or to Morrow Morning, in order to adviſe him in the naming of Council and a Sollicitor.

To which Purpoſe, the Earl of *Winton* named Mr. *Hereot* a Clergyman, Mr. *Menzies*, Major *Sinclair*, and Mr. *George Lesſley* a Lawyer. And then he again withdrew. And the Names of the ſeveral Perſons mentioned by the Earl of *Winton* being read to him, it was ordered, that they have leave to repair to the ſaid Earl at any convenient Hour, any time before the Sitting of the Houſe to Morrow, in order to adviſe him in the naming of Council and a Sollicitor, to aſſiſt him in his Defence: As alſo, that the ſeveral Lords impeached, or any of them, have Liberty to cauſe Search to be made, and Copies of Records and Journals to be taken out, in order to their Defence; and that the ſaid Lords ſhall have Summons iſſued for ſuch Witneſſes as they ſhall reſpectively ſend in the Names of, to be by them made Uſe of at their Trials; which Witneſſes ſhall have the Protection of this Houſe for their ſafe coming and going, during the time of the ſaid Trials.

On the 12*th* of *January*, another Petition of the Earl of *Winton* was preſented to the Houſe, and read, praying that he might have ſome further Time for nominating Council, and a Sollicitor, to act for him, and in the mean time to allow his Friends formerly named, to have

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have Access to him; he having caused Application to be made to Sir *Thomas Powis* and Mr. *Mead*, to have appeared for him; but they both excused themselves. And it was ordered, that the same Persons before allowed to go to the Petitioner, have leave to resort to him at any seasonable Time, before Eleven of the Clock to Morrow in the Forenoon, in order to the advising him in the naming of other Council, instead of those who have refused.

On the 19*th* of *January*, the Earl of *Winton* was brought to the Bar, by the Gentleman-Usher of the Black Rod, where he kneeled until the Lord Chancellor directed him to rise; and his Lordship acquainted him with the abovementioned Order, and demanded of him, if he was ready to put in his Answer with the other Lords? He said, he had a Petition to present to the House. He was an entire Stranger to the Nature of their Lordships Proceedings, and desired his Petition might be read; and the same was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled.

The Humble Petition of *George* Earl of *Winton*,

Humbly Sheweth,

THAT on *Thursday* last I having apply'd to your Lordships, representing how I had caus'd Application to be made to two Lawyers, to act as Council for me, in the Impeachment exhibited before your Lordships against me by the Honourable House of Commons; and that they both declin'd to meddle, for Reasons then given;

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given; your Lordſhips were pleas'd to allow me ſome more time for nominating of Council, and Sollicitor, and this Day for giving in my Anſwers; but by reaſon of my cloſe Confinement, and that your Lordſhips Order for allowing ſome Perſons to have Acceſs to me, expired on *Friday* laſt at Eleven Forenoon, I have had no Opportunity of naming other Council and Sollicitors; nor can I have the Aſſiſtance of any, till they are appointed by your Lordſhips, and they allow'd Acceſs to me.

That your Petitioner has ſeveral Specialities and Matters of great Moment, which he conceives neceſſary to be a Part of his Anſwers, and which cannot be drawn into Form, without the Aſſiſtance of his Council and Sollicitors.

Foraſmuch therefore as this Affair is to me of the greateſt Importance, may it pleaſe your Lordſhips to aſſign Sir *Conſtantine Phipps*, and Mr. *Peer Williams*, to be Council; and *Charles Menzies*, and Mr. *James Leſlie*, to be my Sollicitors; and to order, that they may have Acceſs to me from time to time during my Trial; as alſo, that your Lordſhips would be pleas'd to allow Mr. *George Hereot*, a Miniſter of the Church of *England*, to have Acceſs to me from time to time, ſeeing I am confin'd in a Room alone.

And your Petitioner ſhall ever pray, &c.

WINTON.

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After this Petition, the Earl of *Winton* was directed to withdraw; and being withdrawn accordingly, the Order made on the 12*th* upon his Petition was read, as also the several Orders made on *Monday* last; and it was ordered, that the Council mentioned in the said Petition be assign'd him, and that either of the said Sollicitors be likewise assigned, and that he have Time to put in his Answer to the said Articles till *Monday* next; and that the Clergyman mentioned in his Petition, being his Relation, may have Access to him, provided he will stay in Custody with him during his Confinement. Then the Earl of *Winton* was again call'd in, and the Lord Chancellor acquainted him, that the House had considered his Petition, and assign'd him the Council he desir'd, and would assign him either of the two Sollicitors he should chuse; and that the Clergyman abovementioned might come to him upon the Condition before express'd. Then the Earl naming Mr. *Menzies*, the House accordingly assign'd him for his Sollicitor; and order'd, that the said Council and Sollicitor may have Access to him from time to time, at all seasonable Hours; and he withdrew.

On the 21*st* of *January*, a Petition of the Earl of *Winton* was presented to the House, and read, praying that their Lordships would allow him such further Time for putting in his Answer, as their Lordships shall think fit; which was rejected: And being brought to the House on the 23*d* following, the Lord Chancellor acquainted him, that this was the peremptory Day appointed by the House for his putting in his Answer to the Articles of Impeachment, exhibited against him by the House of

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of Commons; and asked him, if he was ready to put in his Answer? He thereupon made some Excuses, and desired further Time for that Purpose. And being directed to withdraw, it was ordered, that the Earl of *Winton* be called in, and acquainted, that this House, upon considering his Petition on *Saturday* last, for further Time to put in his Answer to the Articles of Impeachment exhibited against him, did reject his said Petition; and having indulged him more than any other of the Lords impeached, are still of Opinion, (this being the peremptory Day for putting in his Answer) to allow him no further Time; and that the Consequence of his refusing to plead, which will ensue in Law, is, that Judgment will be awarded against him, as if he had pleaded Guilty. Then he was accordingly call'd in, and the Lord Chancellor acquainted him with the said Matter; and he thereupon delivered in at the Bar his Answer, fairly engross'd on Parchment, which was read; and the Commons reply'd to it on the 28*th* of *January*; and on the 8*th* of *February* following, the Lords past an Order for his Trial to be on the 15*th* of the said Month; but he lodg'd a Petition the same Day, which was read the 10*th*, setting forth, that their Lordships having appointed *Thursday* next for his Trial, he desired that Consideration might be had to the Distance of the Place, and the Season of the Year, for bringing up of his Witnesses, both Men and Women, from *Scotland*, and other Parts. And praying that this House will grant an Order to compel the several Witnesses following, *viz. John Gordon*, *George Trotter*, *George Hogg*, *John Stewart*, all Servitors to the Earl of *Winton*;

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—— *Beatoun*, Wife to Mr. *David Nicholſon* in *Tranent*; *Adam Purvis*, Clerk of the Epiſcopal Meeting House in *Tranent*; *Chriſtopher Seton*, in *Port-Seton*; Lieutenant-General —— *Wills*, —— *Forſter*, Eſq; —— *Miller*, Eſq; Captain *Alexander Streton*, —— *Mackintoſh* of *Bordlim*, —— *Aenſlie*, and *Tod*, Baillies of *Muſſelbrough*, and the School-maſter of *Fiſherau*, to appear before this Houſe at the Trial, to give Evidence on Behalf of the Petitioner; and to allow ſuch Time for their coming hither, as, in regard to the Diſtance of the Place, and the Seaſon of the Year, and the Importance of the Affair, their Lordſhips, in their great Wiſdom and Juſtice, ſhall think reaſonable. And then an Order paſſed for enlarging the Time for his Trial, to *Thurſday* the Eighth Day of *March*: And for requiring the ſeveral Perſons afore-named, to attend on *Thurſday* the ſaid Eighth Day of *March*, as Witneſſes on behalf of the Petitioner, except ſuch of the ſaid Perſons as were Priſoners for High Treaſon; and that they ſhould have the Protection of the Houſe for their ſafe coming and going, during the Time of the ſaid Trial.

On *Monday* the 5*th* of *March*, he deliver'd another Petition, ſetting forth the Neceſſity of having more Time allow'd to prepare for his Trial; and it was that Day, on reading the ſaid Petition, enlarg'd to the 15*th* of *March*. This was follow'd by another Petition to the ſame Effect, on the ſame Day Sevennight; but his Sollicitor failing to make good the Allegation of the ſaid Petition, the ſame was rejected; and this was follow'd the next Day, by ſeveral Orders touching the Form of, and Proceeding to the ſaid Trial.

March

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March 14. the Earl desired, by Petition, to have Mr. *Kettelby*, and Dr. *Strahane*, added to his Council, which was comply'd with; as was likewise a Motion, that the following Persons, whose Names were contained in a List exhibited at the same Time, on Behalf of the Earl of *Winton*, might be summon'd as Witnesses for the said Earl at his Trial; being then, as alledged, in or near the City of *London*, viz. *John Gordon* of *Kirkhill*; *Alexander Nisbet*, Writer in *Edinburgh*; *William Knox*, *Thomas Baine*, *John Watteſone*, all three of *Seaton*; Mrs. *Magdalen Corsbie* of *Cannongate*, *Agnes Duncan* of *Seaton*, Dr. *Lidderdale* a Physician, Dr. *Cockburne* a Divine, Dr. *John Inglis*, Major *Sinclair*, *George Trotter*, and *George Hogg* of *Seaton*, be, and are hereby required to attend this House in *Westminster-Hall*, to Morrow at Ten a Clock in the Forenoon, in order to be examined as Witnesses, on the Behalf of *George* Earl of *Winton*, at his Trial. The House being informed, that the Earl of *Winton* desired that General *Carpenter* might be examined as a Witness at his Trial: The said General *Carpenter* being a Member of the House of Commons, a Message was sent to that House, to acquaint them, that the Lords do desire that they will give Leave to the said General *Carpenter* to be examined at the said Earl's Trial; which they granted.

Ordered, That the Witnesses which shall be produced by the Earl of *Winton*, to be examined in his Defence, shall be examined upon Oath; which Oath to be administer'd to the Witnesses on both Sides, at the said Trial, shall be this:

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The Evidence which you ſhall give in this Trial, concerning George *Earl of* Winton, *Priſoner at the Bar, ſhall be the Truth, the whole Truth, and nothing but the Truth.*

So help you God, and the Contents of this Book.

The ſame Day, the Lords ſent a Meſſage to the Commons, to acquaint them, that they would be ready the next Morning at Ten a Clock, to proceed on the Trial of the Earl of *Winton*; who thereupon reſolv'd to be preſent, as a Committee of the whole Houſe, and order'd the Secret Committee to appear as Managers for the whole Houſe.

Monday March 15. *The firſt Day of Trial.*

ABOUT one of the Clock, the Lords came from their own Houſe into the Court erected in *Weſtminſter-Hall*, where the Lords being placed in their proper Seats, and the Lord High Steward upon the Wool-Pack, his Majeſty's Commiſſion to the Lord High Steward was read; and after Proclamation made, *George* Earl of *Winton*, was brought to the Bar by the Deputy-Governour of the *Tower*, having the Ax carry'd before him by the Gentleman-Jaylor, who ſtood with it on the Left Hand of the Priſoner, with the Edge turn'd from him. The Priſoner, when he approach'd the Bar, (after kneeling) bowed to his Grace the Lord High Steward, and to the Houſe of Peers; which Complement was returned him by his Grace, and the Houſe of Peers.

The

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The Lord Steward's Speech at opening the Trial.

George Earl of *Winton*,

YOU are brought to the Bar of this Auguſt Judicature, in order to a fair and impartial Trial, on the Impeachment of High Treaſon, exhibited againſt you by the Commons of *Great Britain* in Parliament aſſembled; to which you have anſwered, and pleaded, Not Guilty: Thereupon the Commons have replied, and undertaken to prove you Guilty of the High Treaſon whereof you ſtand impeached.

Under this heavy Charge, (of which your Lordſhip has long ſince had a Copy, and which you will now hear read again) nothing can be a greater Support to your Mind, (eſpecially if not conſcious of Guilt) than to conſider, that you are about to be try'd by your Peers; not any ſelect Number of them, but by their whole Body aſſembled in Parliament, and indifferently ſummoned to attend this Trial.

Hence your Lordſhip may be aſſured, that Juſtice will be adminiſtred to you, attended not only with that common Degree of Compaſſion, which Humanity it ſelf derives to Perſons in your Condition; but alſo with that extraordinary Concern for you, which naturally flows from a Parity of Circumſtances common to your ſelf, and to them who judge you, (thoſe Bonds, the weighty Accuſation laid upon you, with its Conſequences, almoſt only excepted).

On the other Hand, you muſt not hope, that if you ſhall be clearly proved Guilty, their Lordſhips, being under the ſtrongeſt Obliga-

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tion to do Right, that can be laid on noble Minds, I mean, that of their Honour, will not break through all the Difficulties unmerited Pity may put in their Way, to do perfect Juſtice upon you, however miſerable that muſt render your Condition.

Your Lordſhip will not be interrupted while you are making your Defence in a proper Manner; and therefore you will alſo attend with Patience, to what ſhall be ſaid by the Managers of the Houſe of Commons, or given in Evidence againſt you.

When any of the Witneſſes produced againſt you by the Gentlemen of the Houſe of Commons, are throughly examined by them, your Lordſhip will have Liberty to croſs-examine every Witneſs before another is call'd.

But the Council aſſigned you, are not to croſs-examine any Witneſſes, nor to give you any Aſſiſtance, publick or private, while Matter of Fact only is in Queſtion; but if any Matter of Law ariſe, during the Courſe of your Trial, they may ſpeak to it in your Lordſhip's Behalf: And to that End, they are permitted to be within Hearing, that they may be the more ready and able to ſerve your Lordſhip on ſuch Occaſion.

Your Lordſhip is the firſt, that, on an Impeachment for High Treaſon, will have had the Benefit of a good Law, made in the firſt Year of the late Queen, (ſince the Revolution;) whereby in all Trials for High Treaſon, as well as other capital Offences mentioned in the Act, the Witneſſes produced on the Part of the Priſoner, are to be examined on their Oaths: So that your Witneſſes will become intitled, in reſpect of the Obligation under which they

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they give their Teſtimony, to the ſame Degree of Credit, as the Witneſſes produced againſt you will be.

I take it for granted, that, if your Lordſhip deſires it, you will be allowed the Uſe of Pen, Ink, and Paper, to take Notes, in Order to your Defence. And I doubt not, but if, during the Trial, you are obſerved to omit any juſt Advantage which the Law allows you, I ſhall not only be excuſed, but approved, if I put you in mind of it.

I am alſo commanded to acquaint your Lordſhip, that when you have Occaſion to ſpeak, you are to addreſs your ſelf to the Lords in general, and not to any Lord in particular; as all others, who ſhall have Occaſion to ſpeak in this Trial, will likewiſe take Notice they are to do.

Then the Lord *High Steward* ordered the * *Articles of Impeachment* to be read, which was done accordingly; and afterwards, the *Earl of* Winton's *Anſwer*, and the *Replication* of the Commons to the ſaid Anſwer.

The Anſwer of George *Earl of* Winton, *to the Articles of Impeachment, exhibited againſt him by the Honourable Houſe of Commons, for High Treaſon, and other High Crimes and Miſdemeanours.*

THE ſaid Earl ſaving to himſelf all Benefit of Exception to the Uncertainties and Inſufficiencies in the ſaid Articles of Impeach-

* *Theſe are inſerted before.*

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peachment contain'd; as also all Advantages and Privileges belonging to him as a Peer of *Great Britain*, for Answer to the said Articles, says, That he cannot but esteem it the greatest Additions to his Afflictions, to fall under the Displeasure of the Honourable House of Commons: Yet as his Innocence under these Misfortunes is his Support, so he hopes it will be his Security. He being taken with Persons that were in Arms against the Government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same Impeachment; but when it shall appear, how much the Circumstances of his Case differ from others, he does not doubt but your Lordships great Justice will distinguish him in Judgment; and that it will be as pleasing to that Honourable Body, who are his Accusers, to have an innocent Man acquitted, as one that is Guilty condemned. He begs Leave to take Notice, that he is descended from a very ancient, noble Family, in whose Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treason or Sedition; and he never degenerated so much from his Loyal Ancestors, as to form, or carry on any Design to subvert, or alter the Constitution of these Kingdoms; but for the Preservation of it was, upon all Occasions, ready to sacrifice his Fortune, and even his Life. He was so cautious to avoid giving Occasion to be suspected by the Government, that about Eight Years ago, upon his Return from his Travels, he withdrew from all Conversation, and confined himself to his House, never corresponded by Letter with any Person whatsoever; yet, to his great Misfortune, he could not be quiet,

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or ſafe in his cloſeſt Retirement, for many Perſons, both Officers and others, of the Militia of the Shire of *Lothian*, under the ſpecious Pretence of ſerving the Government; but, in Reality, actuated by private Pique and Revenge, ſeveral Times, contrary to Law, forcibly entred by Night into his Dwelling-Houſe, called *Seaton* Palace, rifled it, turned his Servants out of Doors, and carried away the Proviſions of his Family. The moſt ſacred Places did not eſcape their Fury and Reſentment; they broke into his Chapel, defaced the Monuments of his Anceſtors, took up the Stones of their Sepulchres, thruſt Irons through their Bodies, and treated them in a moſt barbarous, inhumane, and unchriſtian-like Manner; Cannon and Mortars were brought to demoliſh his Houſe, and ſeveral Troops of Dragoons having gotten Poſſeſſion thereof, ſome of them kept Guard there, and when they left it, many of the Militia enter'd, and kept Poſſeſſion thereof, till they were driven from thence by the *Highlanders*, by whom he was likewiſe very ill treated, he being the only Perſon that was plundered by them. By theſe, and many other Severities, the ſaid Earl was forced to leave his Houſe, and ſeek for Shelter among his Tenants and Neighbours, where he was purſued from Houſe to Houſe, and at laſt very unfortunately driven into the Company of ſome of the Gentlemen named in the Impeachment. He preſumes to aſſirm to your Lordſhips, that he did not join them with a traiterous or rebellious Deſign; but only with an Intention to preſerve himſelf from being inſulted and aſſaſſinated; for he had been once before taken up with-

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without any Warrant or Authority; and having got from the Persons in whose Custody he was, they threatned, if they could retake him, to murder him; and had before imbrued their Hands in the Blood of the Son of a neighbouring Gentleman. He never intended to have left his own Country; and when some Gentlemen mentioned coming into *England*, he oppos'd it; he was far from assisting or encouraging them in their Undertakings; he was not admitted into their Secrets, nor informed of their Designs; and was so much a Stranger to their Proceedings, that when they marched towards *Northumberland*, he was told, they were going along the Skirts of the Hills in *Scotland*, to avoid General *Carpenter*; but afterwards discover'd they were in *England*, when it was too late; and to return alone into *Scotland*, was too hazardous; which he did not attempt, because he had Reason to believe, they would soon go back to *Scotland*.

Although he was constrained to keep the other Lords and Gentlemen Company, yet he never joined with them in any Act of Hostility, nor assisted in taking any of the publick Money, or in seizing any Guns, or other Warlike Instruments, or countenanced or abetted them therein. He did not at *Preston*, or elsewhere, fire a Pistol, offer Violence to any Person whatsoever, or in any other Manner, fight against, or resist his Majesty's Forces, but with the rest surrender'd himself to General *Wills*. The Honour of a Peer is more valuable than Life it self; and therefore he ought to be so much the more cautious, that it be not stained with the least Imputation of Guilt. The said Earl knows his Innocence, and hopes your Lord-

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Lordſhips will excuſe him, if in Juſtice to himſelf, and for the Preſervation of his Honour, he does not take upon him the Guilt of Crimes, the very Thoughts of which were always Strangers to his Breaſt: And therefore, in Anſwer to the Impeachment, he ſays, that he is not Guilty of the Treaſon, and other the Crimes and Miſdemeanours mentioned in the ſaid Articles, or any of them, in Manner and Form as is therein alledged; and for his Trial, puts himſelf on your Lordſhips, who are his Peers; and begs your Lordſhips to believe, that his Anſwer proceeds from the Senſe he has of the Truth of it, and not from Obſtinacy, or any Inclination to give your Lordſhips, and the Honourable Houſe of Commons, any unneceſſary Trouble, or from the leaſt Doubt or Miſtruſt of his Majeſty's Clemency. But if, upon his Trial, it ſhall appear, that he hath committed any Act, which, in the Rigour of the Law, may be conſtrued to amount to the Crime of High Treaſon, he hopes the Innocence of his Heart, and his Ignorance in the Law, will, by the Power of your Lordſhips Interceſſion, render him an Object of his Majeſty's Mercy, which he, and the reſt, at the Time of ſurrendring themſelves, were encouraged, by his Majeſty's Officers, to depend upon. The ſaid Earl ſubmits his Caſe thus circumſtanced, to your Lordſhips great Wiſdom and Judgment; and humbly prays your Lordſhips favourable Interpretation thereof; not doubting but to make his Innocence appear to your Lordſhips Satisfaction.

WINTON.

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The Reply of the Houſe of Commons to the Anſwer of George *Earl of* Winton.

A Meſſage was brought from the Houſe of Commons by Mr. *Hampden*, and others, to acquaint this Houſe, that they have conſidered the Anſwer of *George* Earl of *Winton*, to the Impeachment exhibited againſt him by the Knights, Citizens, and Burgeſſes aſſembled in Parliament; and do aver their Charge againſt the ſaid *George* Earl of *Winton* for High Treaſon, to be true; and that the ſaid Earl of *Winton* is guilty of the High Treaſon, in ſuch Manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient Time as ſhall be appointed for that Purpoſe.

Lord *High Steward.* The Diſtance of this Place from the Bar is ſo very great, that I am obliged to ask your Lordſhips Leave, that I come down to the Table. Which being done acordingly, the Lord *High Steward* ſaid, Gentlemen of the Houſe of Commons, you will be pleaſed now to proceed.

Mr. *Hampden.* MY Lords, we appear in this Place in behalf of all the Commons of *Great Britain*, to make good the Impeachment of High Treaſon againſt the Priſoner at the Bar, *George* Earl of *Winton.*

The Commons in Parliament aſſembled, being juſtly alarmed with the Dangers to which this Nation has been expoſed by the late unnatural Rebellion, have found it incumbent on them, to enquire into the Authors and Promoters of ſo fatal and pernicious an Attempt, which was no

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no less than to deprive these Nations of the invaluable Blessings, which they enjoy under the wise and gentle Reign of his most sacred Majesty King *George*.

The indispensable Duty which the Commons owe to his Majesty, and to those they represent, engage them to appear in the Cause of their Country, by examining into the Rise and Progress of the said late traiterous Enterprize, contrived and carried on, with an Intent to depose and murder his said Majesty; and to set up a Popish Pretender to the Crown of these Realms; and in Consequence, to change the Constitution of this Nation, and to introduce a slavish and arbitrary Government.

The Earl of *Winton* appearing to the Commons, to have been deeply engaged in the late Rebellion, their Zeal and Affection, and their Concern for the Safety of the Nation, and the Security of the Protestant Succession, and the Liberties of the People, have rendered it necessary for them to bring to your Lordships Bar this Offender; against whom they have, in the Name of themselves, and of all the Commons of *Great Britain*, exhibited Articles of Impeachment of High Treason, setting forth and charging,

That the Earl of *Winton*, (with his Associates named in the Articles, and divers others) contrary to his Allegiance, did traiterously conspire and imagine the Death of his most sacred Majesty; and in Aid of such Treason, did, in the Months of *September*, *October*, or *November*, 1715. resolve to levy, in several Parts of *Scotland* and *England*, a most destructive War against his Majesty.

That

That his Lordſhip, with other his Confederates, did aſſemble in a warlike Manner, and procur'd Arms, Ammunition, and warlike Inſtruments, and did compoſe an Army, to wage War againſt his Majeſty, and did march thro', and invade ſeveral Parts of this Kingdom, and unlawfully ſeiz'd his Majeſty's Treaſure, for the Service of the Pretender, and took away the Horſes, and other Goods, of many of his Majeſty's peaceable Subjects.

And that during the ſaid March and Invaſion, the Earl of *Winton*, with other Rebels, did, in open Defiance of his Majeſty's undoubted Title to the Crown of theſe Realms, frequently cauſe the Pretender to be proclaimed, in a publick and ſolemn Manner, as King of theſe Realms.

That the more effectually to diſguiſe theſe wicked Intentions, and to delude his Majeſty's Subjects, the ſaid Earl, with other Rebels, did prevail on ſeveral Miniſters of the Church of *England*, and who had abjur'd the Pretender, to pray for the Pretender in ſeveral publick Churches, as King of theſe Realms.

And that the ſaid Earl, his Aſſociates and Accomplices, did, in *November* laſt, traiterouſly poſſeſs themſelves of the Town of *Preſton*, in the County Palatine of *Lancaſter*, and did levy War, and fight againſt his Majeſty's Forces, and procur'd a miſerable Slaughter and Murther of many of his Majeſty's good and faithful Subjects.

My Lords, the Earl of *Winton* has, in his Plea to the ſaid Impeachment, thought fit to deny Part of this great and heavy Charge; and in Anſwer to other Parts of it, he ſuggeſts to your Lordſhips to the Effect following:

That

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That being taken with Perſons that were in Arms againſt the Government, he might be preſum'd to be equally guilty with them; but that when your Lordſhips ſhall conſider the Circumſtances of his Caſe, he doubts not of finding a Diſtinction from others in your Judgment.

He acquaints your Lordſhips with the Loyalty of his Anceſtors, from whoſe Character, he ſays, he is not ſo much degenerated, as to form, or carry on any Deſign againſt the Conſtitution of theſe Kingdoms.

That, to avoid being ſuſpected by the Government, he withdrew himſelf ſome Years ago, from all Converſation, and retir'd to his own Houſe; but that ſeveral of the Militia of the Shire of *Lothian*, under Pretence of ſerving the Government, did, contrary to Law, forcibly enter his Lordſhip's Houſe, which they rifled, and committed ſeveral other Diſorders there.

That afterwards Cannon and Mortars were brought to demoliſh his Houſe, and ſeveral Troops of Dragoons took Poſſeſſion of it; and, upon their leaving it, the Militia came and kept poſſeſſion of his Houſe, till they were driven thence by the *Highlanders*, by whom he was alſo very ill treated.

That by theſe Severities, and afterwards not being ſuffer'd to live quietly among his Tenants, where he had retir'd for Shelter, he was driven into the Company of ſome of the Gentlemen named in the Impeachment; but affirms to your Lordſhips, that it was with an Intent to preſerve himſelf from being aſſaſſinated.

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That he oppos'd the Propoſition of coming into *England*, and was not acquainted with the Deſigns of the other Gentlemen with him; and was ſurpriz'd when he found himſelf in *England*; but declin'd going back, becauſe he believ'd they would ſoon return to *Scotland*.

That he did not aſſiſt in taking any of the publick Money, or in ſeizing any warlike Inſtruments.

That he did not at *Preſton*, or elſewhere, fire a Piſtol, offer Violence to any Perſon, or fight againſt his Majeſty's Forces, but ſurrendered himſelf to the King's General.

And as an Inducement for ſuch Surrender, his Lordſhip ſays, that he, and the reſt with him, were at that time encouraged by his Majeſty's Officers, to depend on his Majeſty's Mercy.

My Lords, notwithſtanding what is contained in the Earl of *Winton*'s Plea, to the Impeachment of the Commons, and the ſpecious Explanation which his Lordſhip has given to ſuch Proceedings of his, as were a Foundation to the Commons, to include his Lordſhip in the Articles againſt the other Lords mention'd therein; we make no Queſtion but we ſhall ſhew the Fallacy and Inſufficiency of the ſaid Plea to our Charge againſt him; and make it appear, that no leſs is contain'd in our Accuſation againſt his Lordſhip, than what the Law in every Man's Breaſt, the Light of Nature, and the Rules of Society, diſapprove of, and condemn.

We ſhall, in the Courſe of our Evidence, prove to your Lordſhips, that the Earl of *Winton* joined early with the Rebels in *Scotland*, in the Beginning of this Enterprize; and that the

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the Diſorders mentioned in his Plea, to have been committed at his Houſe, and which he alledges as the Ground of his leaving it, and ſeeking Shelter among the Rebels, were not the true Cauſe of his joining them; ſince his Lordſhip had left his Houſe before the *Highlanders* came to it.

This noble Peer was too great a Perſon to act an ordinary Part in this Rebellion. He openly engag'd in it, and not only appeared in Perſon, but led on, and encouraged his Aſſociates in it; ſome of which, through the Bleſſing of God on his Majeſty's Arms, are now in the Hands of Juſtice, and others have ſuffered for the ſame Treaſon.

We ſhall prove to your Lordſhips, that the Earl of *Winton* formed a Troop of Horſe, which he maintained at his own Charge.

That he afterwards commanded a Squadron of Horſe; and that he continued his Command thereof in the ſeveral Marches to *Preſton*, and until the Surrender of that Place to the King's Forces.

That during the ſeveral Marches of the Rebels, the Earl of *Winton* was with them on Horſeback, arm'd with a Sword and a Caſe of Piſtols; and that he never ſhew'd any Uneaſineſs, but always appeared as forward as any one; and that at the Action at *Preſton*, his Lordſhip was aſſiſting, and very active among the Rebels.

That at ſeveral Places in *Scotland* and *England*, his Lordſhip, and other Rebels, caus'd the Pretender to be proclaim'd King of theſe Realms, and that his Lordſhip was preſent at ſuch Proclamations.

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That his Lordſhip, and other Rebels, did, in ſeveral Places, cauſe his Majeſty's Treaſure to be ſeiz'd, for the Service of the Pretender; and did, in ſeveral Places, prevail on Miniſters of the Church of *England*, and who had abjur'd the Pretender, to pray for him in the Publick Churches, as King of theſe Realms.

That when the Rebels ſurrendered themſelves at *Preſton* to the King's Forces, they were far from receiving any Aſſurances of Mercy from his Majeſty's Officers; but were acquainted by the ſaid Officers, that his Lordſhip, and others taken with him, had no Reaſon to expect Mercy, ſince they were taken in open Rebellion againſt his Majeſty.

My Lords, the Commons, who are ever vigilant for the Safety of his Majeſty, and for the Preſervation of the Liberties of the People, cannot anſwer it to God, or their Country, if they neglected to exert themſelves, in bringing to exemplary Juſtice the open and declared Inſtruments of this Rebellion; and it is a Satisfaction to the Commons, that in the Courſe of their Interpoſition, to reſcue the Nation from the fatal Conſequences of the late unprovok'd Rebellion, whatever Miſrepreſentations other Proſecutions may have been formerly liable to, the Notoriety of this Rebellion has been ſo evident, that the moſt malicious of our Enemies want Confidence to deny it.

We are are not ſurpriz'd, that Papiſts ſhould be engaged in this Rebellion, though the moſt unnatural and unexampled in its Circumſtances, by being void of the leaſt Pretext of Provocation; ſince they maintain it lawful to kill a *Heretick* King, and ſuch they term his preſent Majeſty; and 'tis declar'd by them, that ſuch

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a piece of Service is not only lawful, but pious, and agreeable to God.

But how Proteſtants could be poſſeſſed with ſuch a Spirit of Infatuation, and to ſuch a Degree be deluded, as to believe the moſt ſecure and effectual Way to protect the Church was, to have Recourſe to a Popiſh Prince, to reſcue it from the Danger they imagined it liable to, from the Proteſtant Succeſſion taking Place. And how it could enter into the Heart of Proteſtants, to be fir'd with ſuch an ill-directed Zeal, as to act in Conjunction with avowed Enemies of their Religion and Liberties, is not to be accounted for; unleſs ſuch unnatural and deſtructive Attempts, are ſome of the neceſſary Conſequences of the late Male-Adminiſtration.

No leſs was to be the Sacrifice, than of his Majeſty, and his Royal Family, (a Succeſſion of Princes appointed by Divine Providence to be the Guardians of the Proteſtant Intereſt in *Europe*) and of our preſent happy Conſtitution, to appeaſe the Fury of Papiſts and Proteſtants aſſociated in this Rebellion, and who envied us the Bleſſings we enjoy'd, by the uninterrupted Exerciſe of our Religious and Civil Rights and Privileges.

Had this Rebellion taken Place, this Nation, the Glory of the Reformation, the moſt ſubſtantial Bulwark againſt Popery; and that had, at the happy Revolution, under the Influences of King *William* III. of immortal Memory, triumph'd over the arbitrary Deſigns of our Enemies to ſubvert our Conſtitution, was to fall a Victim to Bigottry, Superſtition, and Slavery, the pernicious and neceſſary Conſequences of in-

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troducing a Religion, void of natural Senſe, and natural Conſcience.

If an Attempt to ſubvert the Government, to deſtroy the King, and ſet up a Popiſh Pretender; if marching in an hoſtile Manner; if carrying on a deſtructive War in the Bowels of the Nation, are only Acts of Surprize and Inadvertency, any Rebellion may be palliated over, and excus'd; ſince ſcarce any Circumſtances can be added in Aggravation of that, which has lately been raiſed, and carried on in this Kingdom.

My Lords, I have acquainted your Lordſhips with the neceſſary Occaſion of this Proſecution. I have endeavoured, in the moſt impartial Manner, to diſcharge the Truſt repoſed in me, by opening the Nature of the Charge againſt the Earl at the Bar. I have likewiſe ſtated to your Lordſhips, the Subſtance of his Plea to the Impeachment of the Commons. I have given your Lordſhips a general View of the Evidence which we ſhall produce, to make good our Charge, and to ſhew the Invalidity of the ſaid Plea; and from the Malignity of the late rebellious and traiterous Enterprize, and its fatal Tendency, I have repreſented the Neceſſity the Commons were under, of applying to your Lordſhips for National Juſtice. I am not inſenſible how deficient I have been, in not ſetting a Matter of this Importance in the moſt advantageous Light; but I make no doubt, but that what is wanting in me, will be ſupplyed by the Ability of others that follow; and that your Lordſhips will find no Defect in their Diſcharge of the Parts they have taken in this Proſecution, whatever you may have found in the

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the Opening of the Charge, and in that Part which has come to my Share.

Sir *Joseph Jekyll.* I Have the Command of the House of Commons upon me, to bear a Part in the Prosecution of their Impeachment against this Lord at the Bar.

And that which is assign'd to me, is first to observe to your Lordships, the Nature of the Charge; and, in the next Place, to take Notice of the Defence made to that Charge; and, lastly, to give your Lordships a general View of the Evidence, which the Commons will produce to maintain their Accusation.

And this I shall do with all the Plainness I am capable of, without attempting so vain or wicked a thing, as to impose upon your Lordships, or divert you from the true Merits of this Cause.

My Lords, the Charge exhibited against this Lord, is a Charge of High Treason; High Treason at the Common Law, as declared by the Statute of the 25*th* of King *Edward* III. And there are two Species of High Treason mentioned in that Statute, which the Commons have taken notice of in their Articles of Impeachment. The first is, compassing and imagining the Death of the King; the second is, levying War against his Majesty.

My Lords, the Overt-Acts that are set down in the Articles, I think may be reduced to these Heads: First, a Conspiracy of the Earl of *Winton*, with other Lords and Gentlemen his Accomplices, to levy War, with an Intent to depose the King; and a Conspiracy to levy such a War, hath been held a sufficient Overt-

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Act of compaſſing and imagining the Death of the King.

My Lords, the next Overt-Act is, his Lordſhip's joining with his Accomplices in Proclaiming the Pretender, which is endeavouring to ſet up another Prince in the Room of his Majeſty; and I believe it will not be doubted, but that is likewiſe an Overt-Act of the ſame Species of Treaſon. And if there wanted another Overt-Act, the levying War againſt the King, with an Intent to depoſe him, (which is likewiſe mentioned in the Articles, as a diſtinct Species of Treaſon) may ſerve for an Overt-Act of the other Species, of compaſſing and imagining the King's Death; for though it is reckoned in the Statute as a diſtinct Treaſon; yet it doth not thereby ceaſe to be of the Nature of an Overt-Act, of compaſſing and imagining the King's Death, which it was antecedent to, its being declared a diſtinct Species; and this Point is likewiſe ſupported by Authorities, and many Attainders have been upon it.

My Lords, the ſecond Species of High Treaſon I charge upon this Lord, is that of levying War againſt the King; and the Overt-Acts mentioned are, the forming an Army, marching in an hoſtile Manner, ſeizing a Town, the Town of *Preſton*, engaging and fighting with the King's Forces.

My Lords, perhaps it was not neceſſary to have alledged any of theſe Overt-Acts of levying War againſt the King; becauſe levying War it ſelf being an Act, it ſupercedes the Neceſſity of inſtancing particular Acts of Hoſtility. But to avoid all Cavils, theſe particular

Acts

Acts are likewiſe alledged in the Commons Impeachment.

My Lords, I find another Crime charged upon this Lord, who ſtands at the Bar; and that is Murder, the Murder of many of the King's faithful Subjects. And although this Crime is not mentioned in the Title of the Articles; and there was a good Reaſon for not doing it, ſince it is ſwallowed up in the High Treaſon, the greater Crime in the Eye and Eſtimation of the Law, yet it doth not thereby loſe its moral Exiſtence, or real Guilt; but, on the contrary, by accompanying the other Crime of High Treaſon, is aggravated, and ſhews with what Miſchief his Heart may be filled, who, at the ſame Time he is murdering his Fellow-Subjects, is meditating the Deſtruction of his Prince, and the Overthrow of his Country's Liberty. My Lords, this is the Nature of the Charge againſt my Lord. In the next Place, I ſhall take Notice of that which occurs to me to be material in his Lordſhip's Defence, or the Anſwer he hath put in to this Charge.

My Lords, he hath pleaded generally, Not Guilty; but not wholly relying on that general Plea, he hath, in his Anſwer, added a particular Specification of his Caſe. He begins in his Anſwer, by taking Notice, and admitting, that *he being taken with Perſons that were in Arms againſt the Government, might reaſonably be preſumed to be equally Guilty, and to be juſtly joined with them in the ſame Impeachment.* He goes on to acquaint your Lordſhips, with what ſevere and barbarous Uſage he met with at his Dwelling-Houſe, which, he ſays, forced him from his Houſe. He tells your Lordſhips at laſt, he was *very unfortunately driven into the Com-*

Company of ſome of the Gentlemen named in the Impeachment; but *he preſumes to affirm to your Lordſhips, that he did not join them with a traiterous or rebellious Deſign, but only with an Intention to preſerve himſelf from being inſulted and aſſaſſinated:* Then he ſays, *Although he was conſtrained to keep the other Lords and Gentlemen Company, yet he never joined with them in any Act of Hoſtility.* But yet he is ſtill under ſome Diffidence of his Caſe; therefore your Lordſhips will find, at the Cloſe of his Anſwer, he ſays, *But if upon his Trial it ſhall appear, that he hath committed any Act, which, in the Rigour of the Law, may be conſtrued to amount to the Crime of High Treaſon, he hopes the Innocence of his Heart, and his Ignorance in the Law, will, by the Power of your Lordſhips Interceſſion, render him an Object of his Majeſty's Mercy; which he, and the reſt, at the Time of Surrendring themſelves, were encouraged, by his Majeſty's Officers, to depend upon.*

My Lords, this ſpecial Caſe which my Lord hath made in his Anſwer, is not at all like the Caſe in my Lord Chief-Juſtice *Coke*'s Third Inſtitute, Fol. 10. upon an Impeachment of High Treaſon. Several Perſons were found to join with Sir *John Oldcaſtle*, and others, (who were in open Rebellion) *pro timore Mortis, & quam cito potuerunt receſſerunt*, and thereupon they were acquitted; but here my Lord doth not pretend any Force was upon him, when he went in, and joined the Rebels. I may therefore preſume to ſay, this Lord's Defence is a weak and a doubtful one; but far be it from the Commons to deſire to convict his Lordſhip of the High Treaſon charged upon him, by any Infirmity in his Defence, or by any Means what-

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whatever, but by the Strength and Clearneſs of the Evidence they ſhall produce to your Lordſhips; and for that I ſhall trouble your Lordſhips but a very little, with repreſenting to you the general View of the Evidence that we ſhall produce, and it is this: This Lord thought fit to go in and join the Rebels, not alone, but accompany'd with fourteen of his own Servants; when he was there, he formed a Troop, conſiſting of his own Servants, and others; he paid the Troop; commanded a Squadron of the Rebels Horſe in their March; aſſiſted at the ſeveral Proclamations of the Pretender; when there was an Alarm given of the coming of the King's Forces, he got on Horſeback, in order to oppoſe and fight them; and he was in Arms, and active with the Rebels in the Action at *Preſton*; and we ſhall ſhew your Lordſhips, that, at the Surrender there, no Promiſe was made, no Expectation of Mercy was raiſed, by any of the King's Officers, in the Mind of this Lord, or of any of his Accomplices.

My Lords, though this be not material to the Iſſue now joined before your Lordſhips; yet it being put into my Lord's Anſwer, and being neceſſary for the Vindication of publick Juſtice, we ſhall ſhew plainly there was not the leaſt Encouragement or Intimation of that kind given.

My Lords, the Evidence will be more largely and particularly taken Notice of, by the Gentleman who is to come after me; and I am ſure my Defects will be amply made up, by what he will offer to your Lordſhips.

But

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But I cannot ſit down without taking Notice, that if this Accuſation be proved againſt the Lord at the Bar, it is a ſtrange Notion of Loyalty, ſo much boaſted of in my Lord's Anſwer, which he hath been pleaſed to entertain.

My Lords, there is not a nobler or more uſeful Principle belonging to a *Britiſh* Subject, than true Loyalty: Loyalty is a faithful and dutiful Obedience to the King, under the Sanction and Direction of the Law. If therefore his Lordſhip hath contracted the Guilt of this high Offence againſt the Law, which is charged upon him, he hath offended againſt this Principle. And this I will ſay in general, whoever they be, who caſt the Law out of the Idea of Loyalty, they looſen the Bands of Allegiance; for it is the Law that binds upon the Conſcience of the Subject, the Faith and Allegiance he owes to his Sovereign; as it doth upon the Conſcience of the Sovereign, that Juſtice and Protection he affords to his Subjects.

Mr. *Attorney-General*. MY Lords, the Charges of High Treaſon mentioned in the Articles of Impeachment, exhibited by the Commons of *Great Britain* againſt the Earl of *Winton*, the Priſoner at the Bar, and the Nature of his Crimes, having been fully opened by Mr. *Hampden*, and Sir *Joſeph Jekyll*, what remains for my Part is, to give your Lordſhips an Account of the Nature of the Evidence we ſhall produce to your Lordſhips againſt the Priſoner, to prove him Guilty of the High Treaſon for which he ſtands impeached. He is charged with two Species of Treaſon, mentioned in the Statute of the 25*th* *Edward* III. *viz.* *Firſt*, Compaſſing and imagining

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gining the Death of our Sovereign Lord the King, whom God long preſerve. *Secondly*, Levying of War againſt the King within this Realm.

The Evidence that will be a Proof of the latter Treaſon, will alſo prove the firſt; for levying War to depoſe the King, is an Overt-Act of conſpiring the Death of the King, and hath always been ſo adjudged.

I ſhall briefly, and with as much Clearneſs and Truth as I can, ſtate the Evidence againſt the Priſoner, as it will appear by the Witneſſes we ſhall produce, without aggravating any thing, which I do not think proper or neceſſary, your Lordſhips being Judges of the Fact, and of the Law ariſing thereupon. I ſhall only make this Obſervation on the Preamble to the Earl's Plea, that it directly contradicts his Plea of Not Guilty; and that if what he alledges be taken as true, he therein owns himſelf to be Guilty; though from thence he concludes, that he is not Guilty.

In *September* laſt, the late Earl of *Mar* in *Perthſhire*, and in the Beginning of *October*, Mr. *Forſter*, and ſome of the Attainted Lords in *Northumberland*, with great Number of Armed Men, raiſed a Rebellion in Favour of the Pretender, and proclaimed him King of theſe Realms, and ſet up his Standard.

About the ſeventh or eighth Day of *October* laſt, the Earl of *Winton* left his Seat at *Seaton*, in the County of *Lothian*, armed with a broad Sword and Piſtols, and carried with him Fourteen or Fifteen of his Servants, well mounted, and ſo armed; about the Tenth Day of *October*, joined the Earl of *Carnwath*, and the Lord Viſcount *Kenmure*, at *Moffett*, in the County

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County of *Annandale*, and there they formed a little Army, which was commanded by Lord *Kenmure*, till they joined *Forſter*.

The Lord *Winton* formed a Troop with his own Servants, and others, and it was called his Troop; and he paid his own Servants Eighteen Pence, or Two Shillings a Day; and he commanded from that Time a Squadron of Horſe, till he, and the others, ſurrender'd to the King's Forces at *Preſton*.

About the Fourteenth or Fifteenth Day of *October*, the Earl of *Winton*, and the reſt of the Rebels, marched from *Moffett*, in a hoſtile Manner, with Trumpets and a Standard, to *Lockmaben*. There the Pretender was proclaimed King of *Scotland*, *England*, &c. and the Earl of *Winton* attended, and joined in the Proclamation, with his Sword drawn. Thence the Rebels marched to *Auchtelfechen*, *Langholm*, *Hawick*, *Jedburg*, *Rodberry*, *Wooler*. Where, about the twentieth Day of *October*, *Forſter* and his Rebels, being about Five Hundred, joined the Lord *Winton*, and the other *Scotch*, being three Troops of Horſe.

From *Wooler*, they all marched to *Kelſoe* in *Tiviotdale*, where the *Highland* Foot, commanded by *Mackintoſh*, joined them. There, at the Croſs, the Pretender was again proclaimed King, with Sound of Trumpet, and Colours flying, the Lord *Winton*, and the reſt, aſſiſting.

On the Seventeenth Day of *October*, they marched back to *Jedburg*, and there were alarmed with an Account that the King's Forces were near; on which they mounted, and marched out of Town, and drew up; the Earl of *Winton* being very active; but the Forces ad-

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advancing, being discovered to be Part of the Rebels, they returned to *Jedburg*; and on the Twenty Ninth Day of *October*, they marched to *Hawick*.

Here Cockades were made of Blue and White Ribbons for the *Scotch* Rebels, to distinguish them from the *English*, who had Red and White; and the Earl of *Winton* wore one, and gave others to his Men.

On the Thirtieth Day of *October*, from *Hawick* they marched to *Langholm*: Here, on the Thirty First Day of *October*, about Five or Six Hundred of the *Highland* Foot left them, and went back; and they would not suffer any Person to come to them, to perswade them to return, but the Earl of *Winton*; and he went to perswade them, but could not prevail; and he returned, and declared it was not his Fault that they went away; and he after very much promoted the Rebels coming into *England*.

Here the Earl might have safely left the Rebels, if he had thought fit, without Hazard; and he had not gone alone, as in his Preamble he alledges.

From *Langholm*, the Rebels marched to *Langtown* in *Cumberland*; and on the First Day of *November*, to *Brampton*; on the Second, to *Penrith*; on the Third, to *Appleby*; on the Fifth, to *Kendall*; and on the Sixth, to *Kirby-Lonsdale*.

At all these Places, the Pretender was proclaimed King, the Earl of *Winton* assisting.

On the Seventh Day of *November*, they marched from *Kirby-Lonsdale* to *Lancaster*, into which the Rebels marched with their Swords drawn, particularly the Earl of *Winton*; and here

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here they again proclaimed the Pretender King, Lord *Winton* aſſiſting in the Circle.

Here the Rebels ſeized Arms, and ſome Pieces of Cannon.

From *Lancaſter*, the Horſe of the Rebels marched on the Ninth Day of *November* to *Preſton*, the Foot halted at *Garſtang*, and came to *Preſton* the Tenth.

In the Way to *Preſton*, the Rebels were joined with about Fifteen Hundred Men, moſt Part being of the County of *Lancaſter*.

And at *Preſton*, the Pretender was again proclaimed at the Croſs.

During this March, at ſeveral Places, particularly at *Duns*, *Bromton*, and *Appleby*, the publick Revenue of the King was collected by the Rebels, and Ceſſes raiſed on the King's Subjects.

They marched with Drums, Trumpets, and Colours; and, where they could, took Priſoners ſuch as appeared for his Majeſty.

They cauſed the Pretender to be prayed for, as King, in the Churches in *Lancaſter*, and other Places, in their March.

Their conſtant Health was the Pretender's, by the Name of King *James*, and Succeſs to their Cauſe.

During the whole March, the Earl of *Winton* never ſhewed any Uneaſineſs or Backwardneſs, but always appeared as forward and active as any of the Rebels.

Mr. *Calderwood*, their Quarter-Maſter, quartered the *Scots* in all Places; and the beſt, next to the Lord *Kenmure*'s, he provided for the Earl of *Winton*, who uſed to complain, if good Quarters were not provided for him.

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The next Part of our Evidence will be, to ſhew what happened at *Preſton*; of which the Rebels had taken Poſſeſſion the Tenth Day of *November*.

On *Saturday* the Twelfth Day of *November*, about One in the Afternoon, General *Wills* with the King's Forces inveſted the Town, and attacked it that Day, and on *Sunday*; and the Rebels defended it, and had made a Barrier at the entring of the Town, and planted the Foot in ſeveral Lanes and Streets for their Defence, and had the Cannon with them which they ſeized at *Lancaſter*.

The Earl of *Winton*, during the Attack, was with the other Lords, at the Head of Two Hundred Men, drawn up in the Market-place; he had his Sword, a Piſtol in one Hand, and another in his Breaſt; during that Attack, ſeveral of his Majeſty's Officers and Soldiers were killed.

On *Sunday*, about Ten in the Morning, General *Capenter* came alſo to *Preſton*, with the King's Forces under his Command. Thereupon the Rebels, finding themſelves to be ſurrounded, about Three in the Afternoon, ſent out Colonel *Oxborough* to the Generals, to know what Terms would be granted to them, if they would ſurrender; the Generals gave this Anſwer, That no Terms would be granted to them, but that they muſt ſurrender at Diſcretion.

Soon after, the Rebels ſent out Captain *Dalzeel*, to deſire Time till Seven a Clock on *Monday* Morning, to conſider whether they ſhould ſurrender at Diſcretion. Upon which General *Carpenter* ſent Colonel *Churchill*, and General *Wills* Colonel *Cotten*, into the Town, to ac-

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quaint the Rebels, that the Time desired should be allowed them, provided they sent out immediately an *English* Lord, and one of the *Mackintoshes*, as Hostages, that none within the Town should attempt to escape, or make any Works for their Defence.

Colonel *Churchill* and Colonel *Cotten* went into the Town, and there met the Earl of *Winton*, and the other Lords, and Mr. *Forster*, and told them their Message. All the Lords treated with them about the surrendring the Town; and severally gave their Words, that if Time might be allowed them till next Morning to surrender, they would use their Endeavours that none should make their Escape, and that they would not throw up any new Works for their Defence. Which Terms were agreed to, and the Earl of *Derwentwater*, and Colonel *Mackintosh*, were delivered to them, and brought to the Generals as Hostages, and staid all Night; and in the Morning early, the Rebels agreed to surrender at Discretion; and the Lord *Forester* took Possession of the Town, where he found the Earl of *Winton* in Arms, and he surrendred himself to the Lord *Forester*, and delivered to him two Cases of Pistols; and being in Custody, complained of the little Regard Mr. *Forster* had shewed to a Man of his Quality; and said, all the Respect that he had shew'd him was, to give him the Post of Honour when there was any Danger.

The Generals, *Carpenter* and *Wills*, never offered any other Terms, than that the Rebels should surrender at Discretion; never promised them Mercy, or that they would even intercede for Mercy for them; nor gave the Colonels sent into the Town, any Orders to offer Mercy,

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Mercy, nor did they: All the Encouragement they gave them, to ſurrender at Diſcretion, was, that if they did do ſo, they ſhould not be immediately put to the Sword by the Soldiers; and denied to promiſe even to recommend them to the King's Mercy.

This is the Subſtance of the Evidence we ſhall lay before your Lordſhips, and the Order we ſhall give it in; and if what I have opened be proved, as I believe it will, or I would not have mention'd it, I apprehend it will fully prove the Charge againſt the Noble Lord, and ſhew how vain the Allegations in the Preamble to his Plea are.

I beg leave to ſay one thing more. The Noble Lord alledges, in the Preamble to his Plea, that he never ſhot off a Piſtol: Certainly that is not material; for aſſembling and marching in a hoſtile Manner for a publick Purpoſe, and oppoſing the King's Forces, is Levying a War, although the Lord accuſed never ſhot off a Piſtol.

We will call our Witneſſes; and begin with *William Calderwood*, who was Quarter-Maſter the whole Time with Lord *Winton*.

Sir. *J. Jekyll.* My Lords, we deſire that *William Calderwood* may be ſworn.

Lord *High Steward.* Is it *William Calderwood* you call?

Sir. *J. Jekyll.* My Lords, we deſire *William Calderwood* may be ſworn.

And he was ſworn by the Clerk accordingly.

Sir *J. Jekyll.* Mr. *Calderwood*, pray acquaint my Lords, what you know concerning this Rebellion, or any Part that the Noble Lord at the

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Bar had in it; tell the Story according to your own Method.

Lord *High Steward.* Do you hear what Queſtion is asked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of *October* I went, with about Seventy Horſe, to join my Lord *Carnwath*, my Lord *Winton*, and my Lord *Kenmure*, at *Moffet*, where the Pretender was proclaimed.

Attorney General. We deſire that he may acquaint your Lordſhips, what Number of Men they had at *Moffet?*

Calderwood. One Hundred and Fifty.

Att. Gen. What Number of Men?

Calderwood. One Hundred and Fifty.

Att. Gen. Was the Priſoner at the Bar amongſt them? and did he bring in any with him?

Calderwood. Yes.

Att. Gen. About what Time did he come in?

Calderwood. Towards the Evening of the Eleventh Day?

Att. Gen. What Day?

Calderwood. The Eleventh.

Sir *J. Jekyll.* What Number did the Lord *Winton* bring with him?

Calderwood. About Fourteen.

Lord *High Steward.* You ſpeak of the Priſoner at the Bar; he came in with Fourteen Men?

Calderwood. Yes, my Lord.

Att. Gen. Were they all armed; or how many were armed?

Calderwood. I do not know whether all were; but the moſt Part of them were with Sword and Piſtol.

Lord

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Lord *High Steward.* You have ſaid at what Place they were, but your Voice did not reach hither; At what Place?

Calderwood. At *Moffet.*

Sir *J. Jekyll.* When my Lord at the Bar join'd the Rebels, what did they do? Go on, and tell your Story.

Calderwood. They went to *Lockmaben.*

Sir *J. Jekyll.* When did the Lord at the Bar join them there?

Calderwood. The next Day.

Att. Gen. What was done there?

Calderwood. The Pretender was proclaimed there next Day.

Att. Gen. Was the Noble Lord at the Bar aſſiſting at the proclaiming of him?

Calderwood. Yes, he was.

Att. Gen. In what Manner did he aſſiſt?

Calderwood. With his Sword drawn on Horſe-back.

Lord *High Steward.* Who did aſſiſt at the Proclamation with a drawn Sword?

Calderwood. The Earl of *Winton.*

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchtelfechen.*

Att. Gen. Whither did you march rrom thence?

Calderwood. To *Langholm.*

Sir *J. Jekyll.* And whither then?

Calderwood. To *Hawick.*

Att. Gen. Go on.

Calderwood. The Pretender was proclaimed there.

Sir *J. Jekyll.* Was the Lord *Winton* preſent at the Proclamation?

Calderwoed. Yes.

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Sir *J. Jekyll.* Whence did you go from thence?

Calderwood. To *Jedburg.*

Lord *High Steward.* Was the Pretender proclaimed there?

Calderwood. Yes.

Sir *J. Jekyll.* Who were present.

Calderwood. The Earl of *Winton*, *Carnwath*, and all the Lords.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry.*

Att. Gen. What happen'd there?

Calderwood. We were join'd by General *Forster.*

Att. Gen. How long did you stay there?

Calderwood. Two Nights.

Att. Gen. Was the Pretender proclaimed at *Rodberry?*

Calderwood. No.

Att. Gen. What Place did you go next to?

Calderwood. To *Wooler.*

Att. Gen. Whither from thence?

Calderwood. To *Kelsoe*, where we were joined by the *Highland* Foot.

Sir *J. Jekyll.* What Foot do you mean?

Calderwood. The *Highlanders.*

Sir *J. Jekyll.* Who commanded them?

Calderwood. Brigadier *Mackintosh.*

Sir *J. Jekyll.* From *Kelsoe*, whither did you go?

Calderwood. Back again to *Jedburg.*

Sir *J. Jekyll.* Whither from *Jedburg?*

Calderwood. To *Hawick.*

Att. Gen. What happen'd at either of these Places?

Calderwood. Nothing.

Sir

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Sir *J. Jekyll.* At *Hawick*; did nothing happen there?

Calderwood. No.

Att. Gen. Was the Pretender proclaimed at *Hawick* at either of the Times?

Calderwood. Yes, the firſt Time, but not the ſecond.

Att. Gen. Who were preſent?

Calderwood. All the Lords.

Att. Gen. Name them ——— Was the Priſoner at the Bar there?

Calderwood. Yes.

Sir *J. Jekyll.* From *Hawick*, the ſecond time, to what Place did you go?

Calderwood. To *Langholm.*

Att. Gen. What happen'd at *Langholm?*

Calderwood. Five or Six Hundred of the *Highland* Foot went from us.

Att. Gen. Was there any Endeavours uſed to bring thoſe Five Hundred *Highlanders* back again.

Calderwood. I don't know of any.

Sir *J. Jekyll.* Who went to them? Did any of thoſe that were in Arms there go to them?

Calderwood. I was not there when they went off.

Att. Gen. Did the Noble Lord attempt to go off with them, the Priſoner at the Bar?

Calderwood. No; at *Jedburg* the Earl of *Winton* went up to them, to make them come back; where the Foot deſigned to go, and the Horſe were drawn up; and they would have no Body come to them but the Priſoner.

Lord *High Steward.* I do not hear you; what do you ſay?

Calderwood. At *Jedburg* the Earl of *Winton* went to them.

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Att. Gen. Did he declare any thing after his Return about their going off, or their not returning?

Calderwood. No, not at *Jedburg*.

Att. Gen. Any where else?

Calderwood. I heard him at *Langtown* say, it was not his Fault they were gone off.

Att. Gen. Pray, might not my Lord *Winton* have gone off with them, if he would?

Calderwood. Yes, he might.

Att. Gen. From *Langtown*, whither did you go?

Calderwood. To *Brampton*.

Att. Gen. Whither next?

Calderwood. To *Penrith*.

Att. Gen. Whither next?

Calderwood. To *Appleby*.

Att. Gen. Whither next?

Calderwood. To *Kendall*.

Att. Gen. Whither next?

Calderwood. To *Kirby-Lonsdale*.

Att. Gen. What happen'd there?

Calderwood. The Pretender was proclaimed at the two last Places.

Sir *J. Jekyll.* Who was there?

Calderwood. I saw him there.

Sir *J. Jekyll.* Who?

Calderwood. The Earl of *Winton* at *Kirby-Lonsdale*.

Sir *J. Jekyll.* Whither did you go from thence?

Calderwood. To *Lancaster*.

Sir *J. Jekyll.* Was the Pretender proclaimed there?

Calderwood. Yes.

Sir

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Sir *J. Jekyll.* Who were preſent?

Calderwood. Earl of *Winton*, *Kenmure*, *Carnwath*, *Nithiſdale.*

Sir *J. Jekyll.* How did they enter the Town of *Lancaſter*?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms, or any Guns ſeized there?

Calderwood. Yes, Six Cannon were ſeized.

Att. Gen. From whence did they take them?

Calderwood. From a Ship.

Att. Gen. Speak up, and tell my Lords.

Calderwood. They ſeized ſix Guns.

Att. Gen. Whence did they take them?

Calderwood. From a Ship.

Att. Gen. What became of them?

Calderwood. They carry'd them to *Preſton*, and mounted them there.

Att. Gen. What Time came you to *Preſton* from *Lancaſter*?

Calderwood. What Time? We ſtay'd two Nights at *Lancaſter.*

Mr. *Cowper.* Sir, I deſire to ask you a Queſtion —— Whether you was at Church at *Lancaſter*?

Calderwood. Yes.

Mr. *Cowper.* Who was pray'd for there?

Calderwood. The Pretender, as King of *England.*

Sir *J. Jekyll.* Who was at Church? Was it the Pariſh-Church?

Calderwood. Yes, the Pariſh-Church.

Sir *J. Jekyll.* Who was preſent at Church?

Calderwood. I do not remember.

Mr. *Cowper.* From *Lancaſter*, whither did you go then?

Calderwood. We went to *Preſton.*

Mr.

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Mr. *Cowper*. What Day did you arrive at *Preſton*?

Calderwood. The Ninth or Tenth Day of *November*.

Mr. *Cowper*. Did the Horſe and Foot arrive the ſame Day?

Calderwood. No; the Horſe came in one Day, and the Foot another.

Mr. *Cowper*. How long after the Horſe did the Foot come?

Calderwood. The next Day; then the Pretender was proclaimed. The Horſe came in on a *Wedneſday*, the Foot on *Thurſday*.

Att. Gen. Had you any Diſtinction between the *Scotch* and *Engliſh*, by Cockades?

Calderwood. Yes.

Att. Gen. What was the Diſtinction?

Calderwood. The *Scotch* had Blue and White, and the *Engliſh* had Red and White.

Att. Gen. Did the Noble Lord meddle with any Cockade?

Calderwood. Yes, he had one at *Hawick*.

Att. Gen. Did he diſtribute them?

Calderwood. Yes, he delivered them from my Hands.

Lord *High Steward*. Who do you ſpeak of? Raiſe your Voice.

Calderwood. I ſay, my Lord, the Earl of *Winton*, had a Cockade at *Hawick*, and took ſeveral of them from my Hands, and gave them away as he thought fit.

Sir *J. Jekyll*. You ſaw the Earl of *Winton* at *Preſton*, when the King's Forces came thither; do you remember what paſt afterwards?

Calderwood. My Lords, I ſaw him, he had Sword and Piſtols; he was a Foot by the Church-Yard.

Att.

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Att. Gen. As you came along to *Preston*, acquaint my Lords whether you know any thing of the publick Revenues being collected.

Sir *J. Jekyll.* Before that, when my Lord was on Foot with Sword and Piſtols going towards the Church-Yard, was there any Forces drawn up there?

Calderwood. Yes, both Horſe and Foot were drawn up in the Church-Yard.

Sir *J. Jekyll.* While my Lord was in Company, and in this March, was there any Troop formed?

Calderwood. Yes, there was a Troop.

Sir. *J. Jekyll.* Who had any of thoſe Troops?

Calderwood. My Lord *Winton* had the Firſt.

Sir *J. Jekyll.* Of whom did his Troop conſiſt?

Calderwood. It conſiſted partly of Gentlemen, and partly of his own Servants.

Sir *J. Jekyll.* By whom were they paid?

Calderwood. By my Lord *Winton.*

Sir *J. Jekyll.* How much a Day?

Calderwood. Two Shillings a Day.

Sir *J. Jekyll.* In what Manner was the Troop accoutred?

Calderwood. Very well, with Swords and Piſtols.

Att. Gen. Did my Lords Servants retain his Livery in the Army?

Calderwood. He had Five in Liveries.

Att. Gen. What were the reſt?

Calderwood. Domeſtick Gentlemen.

Att. Gen. Did my Lord command only that, or any other Body?

Calderwood. He commanded a Squadron.

Sir

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Sir *J. Jekyll.* In your Paſſage, did my Lord diſcover any Uneaſineſs, or ſeek for any Opportunity of leaving them?

Calderwood. He never did, that I know of.

Sir *J. Jekyll.* I think you quarter'd him; Did he complain of his Quarters at any Time?

Calderwood. He order'd me to give him good Quarters.

Sir *J. Jekyll.* And accordingly you did it for him?

Calderwood. Yes.

Att. Gen. We will go on. What happen'd at *Preſton?* What Time did the King's Forces come there?

Calderwood. We came on *Wedneſday*, they came on *Saturday*.

Att. Gen. Tell my Lords what happened after the King's Troops came to that Town.

Calderwood. We defended the Town two Nights.

Att. Gen. When did they ſurrender?

Calderwood. They ſurrendered on *Monday*.

Att. Gen. What paſſed before? Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes, and we defended it.

Sir *J. Jekyll.* Was there any Proviſion made to ſecure the Town? Acquaint my Lords how it was defended.

Calderwood. We barricado'd it in every Street.

Sir *J. Jekyll.* After what Manner? How?

Calderwood. We had two Cannon in every Street.

Att. Gen. During the Time the King's Troops were at the Town, what Share did my Lord *Winton* bear in the Defence of it? Where was he?

Calder-

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Calderwood. I saw him go towards the Church-Yard.

Att. Gen. Was there a Body of Men with him in the Church-Yard?

Calderwood. Yes, there was.

Sir *J. Jekyll.* When my Lord joined the Men, and in his March, was there any levying of Money?

Calderwood. They raised Taxes, as they called it, a Cess.

Sir *J. Jekyll.* We have done with this Witness; if my Lord hath a Mind to ask him any Questions, he is at Liberty to do it.

Lord *High Steward.* My Lord, if you have any Question to ask, propose it, and it shall be asked.

Lord *Winton.* I can't examine him; I desire my Council may examine him.

Lord *High Steward.* I told your Lordship, your Council are not to assist your Lordship in cross-examining the Witnesses; you have a Liberty of cross-examining them your self, by proposing your Questions, and they will be asked by the Court.

Lord *Winton.* I never examined a Witness in my Life; I desire my Council may do it for me.

Lord *High Steward.* Have you any Questions?

Lord *Winton.* My Lord, I hope you will allow my Council to speak for me.

Lord *High Steward.* Have you any Question you desire to be ask'd, and it shall be asked?

Lord *Winton.* I desire my Council may ask for me; it is very hard to have none to speak for me; and there are Twenty against me.

Pro-

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Proclamation made for Silence as uſual.

Lord *High Steward*. My Lord *Winton*, I hope now you will be better heard. If you have any Queſtion to ask this Witneſs, if your Lordſhip propounds it, it ſhall be asked him.

Lord *Winton*. My Lord, allow my Council to ſpeak for me; I have but Two.

Lord *High Steward*. My Lord, I have acquainted you, (but apprehend you did not hear me) that the Law of the Land doth not allow it.

Sir *J. Jekyll*. My Lords, if my Lord at the Bar doth not think fit to ask this Witneſs any Queſtions, nor your Lordſhips, we muſt call another Witneſs.

Lord *High Steward to* Calderwood *the Witneſs*. Direct your Anſwer this Way: You have mentioned ſeveral Proclamations of the Pretender; was there any at which my Lord, the Priſoner at the Bar, was not preſent?

Calderwood. I did not ſee him at the Proclamation at *Preſton*.

Lord *High Steward*. At how many other Places did you ſee him?

Calderwood. I ſaw him at *Wooler*, *Jedburg*, *Kelſoe*, and *Kirby-Lonſdale*, and *Lancaſter*, where the Pretender was proclaimed.

Lord *High Steward*. Did he join in cauſing him to be proclaimed, or did he ſeem to miſlike it?

Calderwood. No, my Lord, he was always among the reſt.

Att. Gen. With your Lordſhip's Favour, the next Witneſs is *James Lindſey*; we deſire he may be ſworn.

Lord

Lord *Winton*. My Council are preſent; pray allow my Council to ſpeak for me, I am not uſed to ſpeak in ſuch Aſſemblies.

Lindſey was ſworn accordingly.

Lord *High Steward*. Who do you call next, Gentlemen?

Att. Gen. James Lindſey is ſworn; we deſire he may give your Lordſhips an Account, whether he was at any Time at *Moffett*, when the Pretender was proclaim'd, and what Share my Lord *Winton* had in it? —— I believe it will be better to have ſomething for the Witneſs to ſtand upon; — ſtay a little, till ſomething is brought to ſtand upon.

A Chair was brought to ſtand upon.

Sir *J. Jekyll*. Was you at *Moffett*?

Lindſey. Yes.

Sir *J. Jekyll*. What paſt there, and who was at that Place?

Lord *High Steward*. Keep your Face, and direct your Anſwer this Way; though the Gentlemen on the Left Hand ask you Queſtions, yet keep your Face this Way.

Lindſey. I ſaw ſeveral Gentlemen.

Sir *J. Jekyll*. But did you ſee my Lord *Winton* there?

Lindſey. Firſt, I ſaw him there; the ſecond Time, I ſaw him at *Jedburg*; the third Time, at *Kendall*; and the laſt at *Preſton*.

Sir *J. Jekyll*. You ſaw him at theſe Places you have mentioned, what happened at either of theſe Places?

Lindſey. The firſt Time I ſaw him, he was riding on a Grey-Horſe, mounted with Sword and Piſtol; the ſecond Time, ſitting with the Guard; and at *Kendall* on Horſeback; when he came out of Town, I ſaw him riding on Horſe-

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Horſeback; and at *Preſton*, I ſaw him riding at the Market-Place, with other Gentlemen along with him.

Sir *J. Jekyll.* Was there any Proclamation made at any of theſe Places?

Lindſey. Yes, there was a Proclamation at *Jedburg*; they told me they proclaimed the Pretender.

Sir *J. Jekyll.* Did you hear the Proclamation?

Lindſey. I heard the Voice, but not the Words pronounced.

Sir *J. Jekyll.* Who aſſiſted at it?

Lindſey. A great many Gentlemen on Horſeback.

Sir *J. Jekyll.* Was the Priſoner at the Bar there?

Lindſey. I did not ſee him.

Sir *J. Jekyll.* Was the Priſoner at the Bar at *Lancaſter?*

Lindſey. I do not know, I was not there.

Sir *J. Jekyll.* Was he at *Preſton*?

Lindſey. Yes, he was there.

Sir *J. Jekyll.* Was you preſent when they proclaimed the Pretender there?

Lindſey. I was ſtanding at a great Diſtance, but did not hear it, but ſaw the Army.

Sir *J. Jekyll.* From thoſe Places when you marched, in what Manner did you march? In Squadrons?

Lindſey. Yes, in Squadrons.

Att. Gen. Did the Noble Lord at the Bar command a Squadron?

Lindſey. I did not know what his Lordſhip's Command was; he rode at the Head of the firſt Squadron.

Att. Gen. Did he march along with the Forces?

Lind-

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Lindſey. I had very ſeldom Occaſion to ſee his Lordſhip; I believe he did.

Sir. *J. Jekyll.* Do you know any thing of raiſing Money?

Lindſey. I heard talk of it only.

Sir *J. Jekyll.* What Troops were with the Rebels?

Lindſey. I can't tell how many.

Sir *J. Jekyll.* Do you remember any one Troop?

Lindſey. Yes, there was *Lockhart*'s.

Sir *J. Jekyll.* Any beſide?

Lindſey. There was one went by the Name of my Lord *Winton*'s; but I knew it not.

Att. Gen. Who was there in that Troop of *Lockhart*'s?

Lindſey. Several Gentlemen.

Att. Gen. Was there any but Gentlemen?

Lindſey. Some private Men and Servants.

Att. Gen. Whoſe Servants?

Lindſey. The Captain's; Mr. *Lockhart* had two or three himſelf.

Att. Gen. Was there any other Servants?

Lindſey. No; I do not think there was any other.

Att. Gen. Did you know the Troop called my Lord *Winton*'s?

Lindſey. I did not know it; there was one called his.

Att. Gen. Was there any Servants in it?

Lindſey. There was Servants in that Company.

Sir *J. Jekyll.* Were they armed with Sword and Piſtol?

Lindſey. Yes.

Sir *J. Jekyll.* Was you at *Preſton* when the King's Forces inveſted it?

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Lindsey. Yes.

Sir *J. Jekyll.* How did the Prisoner behave himself?

Lindsey. I cannot tell.

Sir *J. Jekyll.* My Lords, we have done with our Examination of this Witness.

Lord *High Steward.* My Lord *Winton*, if you would ask this Witness any Question, propose it, and it shall be asked.

After a considerable Pause,

Att. Gen. Our next Witness is, *Elias Cammeron*; we desire he may be sworn.

He was sworn accordingly.

Mr. *Cowper.* My Lords, we desire he may be asked, whether he was in the Rebels Army.

Lord *High Steward.* You hear the Question; direct your Answer this Way.

Cammeron. Yes, I was there.

Mr. *Cowper.* Under whose Command?

Cammeron. Under the Command of Captain *Mackleane.*

Mr. *Cowper.* And in whose Regiment?

Lord *High Steward.* Turn your Face this Way, that your Voice may be heard.

Cammeron. My Lord *Charles Murray*'s Regiment.

Lord *High Steward.* Whose Command was you under.

Cammeron. Under Captain *Mackleane.*

Sir *J. Jekyll.* In whose Regiment?

Cammeron. In my Lord *Charles Murray*'s Regiment.

Sir *J. Jekyll.* Will you give a general Account of what you know, from the first Time you came into the Army of the Rebels?

Cam-

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Cammeron. I joined them at *Moffet*, and then we proceeded to a Place called *Lockmaben*, and then we marched to *Duns*, from thence to *Kelſoe*; within two Miles of *Kelſoe*, we met the Horſe. Then we went from *Kelſoe* to *Jedburg*; I ſaw my Lord *Winton* there; the next Day we reſted. Then we marched from *Langtown* to *Brampton*, from *Brampton* to *Penrith*, from *Penrith* to *Kirby-Lonſdale*, and from *Kirby-Lonſdale* to *Lancaſter*; where I ſaw my Lord *Winton* at the Head of his Horſe, with a Trumpet ſounding before him; I ſaw them march; we ſtaid a Day at *Lancaſter*, and the Horſe went into *Preſton* the next Day; either *Wedneſday* or *Thurſday* I ſaw my Lord *Winton*; and after the King's Forces were come, I ſaw my Lord *Winton*, with other Lords.

Mr. *Cowper.* You have mentioned proclaiming the Pretender at one or two Towns; pray give an Account at how many Places you obſerved that he was proclaimed?

Cammeron. I heard him proclaimed at *Duns*, at *Kelſoe*, and at *Lancaſter*.

Mr. *Cowper.* I deſire to know, if at any of theſe Places you obſerved the Priſoner, my Lord *Winton*?

Cammeron. At *Lancaſter* I did obſerve him to go into the Ring, when they were going to proclaim him; but at the Time of the Proclamation I did not ſee him, being in the outward Part of the Ring.

Att. Gen. Pleaſe to acquaint my Lords, whether in your March you took any Priſoners?

Cammeron. When we were near *Penrith*, we took a great many Priſoners. I did not ſee them taken.

Att. Gen. Was the Priſoner at the Bar with you in that March?

Cammeron. I cannot really determine, I ſaw him there.

Att. Gen. Where did you ſee him firſt?

Cammeron. At *Kelſoe*, when the Foot joined us.

Att. Gen. Where did you take the Priſoners?

Cammeron. At *Penrith.*

Att. Gen. Did the Noble Lord at the Bar ever leave you after he joined you?

Cammeron. I heard he was not for coming into *England.* I only heard this by Report.

Sir *J. Jekyll.* Was you at *Seaton* Houſe?

Cammeron. Yes.

Sir *J. Jekyll.* Was my Lord *Winton* there?

Cammeron. No; only Brigadier *Mackintoſh*, and the Foot.

Sir *J. Jekyll.* What Time did they come to *Seaton* Houſe?

Cammeron. On *Saturday*, to my beſt Remembrance, they were at *Seaton* Houſe; then the Duke of *Argyle* returned back, and that Night about ſix or ſeven a Clock we retreated to *Seaton* Houſe, and ſtaid there *Sunday*, *Monday*, and *Tueſday.*

Att. Gen. At the Time the *Highlanders* came to *Seaton* Houſe, was this Lord there?

Cammeron. No; I do not know that he was.

Att. Gen. Do you know any thing of the publick Revenues being gathered at *Duns*, *Bromton*, and *Appleby*?

Cammeron. Yes.

Att. Gen. Did they give any Receipts?

Cammeron. Yes, they gave Receipts. I ſaw one, which was to this Effect: After the Year and Date, then, Receiv'd ſuch a Sum of Money as

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as Excise-Duty, due from such a Person to such a Person.

Att. Gen. During the Time the King's Forces attack'd *Preston*, what did you observe my Lord *Winton* do?

Cammeron. What I observed of my Lord *Winton*, was this: I was there by the Church-Yard, there I saw my Lord *Winton* in the Church-Yard, with my Lord *Kennure* and *Derwentter*, at the Time of the Action; but I did not see him in the Action; and whether he had Pistols or not, I cannot be positive.

Att. Gen. Was there any Persons at the Market-place?

Cammeron. I was not at the Market-place?

Att. Gen. You was at the Church-Yard?

Cammeron. Yes.

Sir *J. Jekyll.* When you observed my Lord *Winton*, what did you see him do?

Cammeron. I observed nothing but he was like the rest, riding to and fro with the rest.

Sir *J. Jekyll.* Did you see him assisting at the Proclamation of the Pretender at *Preston*?

Cammeron. I saw him go into the Ring with the rest; but I did not see him at the Time of the Proclamation.

Lord *High Steward.* My Lord *Winton*, will you ask this Witness any Question?

Lord *Winton.* My Lords, I be not prepared, so I hope your Lordships will do me Justice: I was not prepared for my Trial; I did not think it would come on so soon, my material Witnesses not being come up; and therefore I hope you will do me Justice; and not make use of *Cooper*-Law, as we used to say in our Country, Hang a Man first, and then judge him.

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Lord *High Steward*. Did you hear? My Lord *Winton*, pleaſe to ſpeak it again.

Lord *Winton*. I ſaid that I was not prepared for my Trial; I did not think it would come on ſo ſoon. Some Gentlemen are juſt come up, pleaſe your Lordſhips to let me know what they ſay, that I may be the better able to make my Defence.

Lord *High Steward*. If your Lordſhip will ask this Witneſs any Queſtion, now is your Time; but if what you are ſaying is your Defence, you ſhould reſerve that till the Commons have done.

Robert Patten is called and ſworn.

Proclamation made for Silence as uſual.

Sir *W. Thomſon*. With your Lordſhip's Permiſſion, I beg Leave to ask this Witneſs, whether at any Time he was in Company with theſe Rebels, and when he firſt joined them?

Patten. I joined them on the 20*th* of *October*, at *Wooler*.

Sir *W. Thomſon*. Pray, Sir, will you give an Account what paſt from that Time you joined them, till they were taken.

Patten. I remember from *Wooler* we marched to *Kelſoe*.

Sir *W. Thomſon*. Did you ſee my Lord *Winton* at *Wooler*?

Patten. I cannot ſay I did.

Sir *W. Thomſon*. Did you ſee him at *Kelſoe*?

Patten. I ſaw him when the Proclamation was there.

Sir *W. Thomſon*. What Proclamation?

Patten. To proclaim the Pretender.

Sir *W. Thomſon*. Was my Lord *Winton* preſent?

Patten. Yes.

Sir

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Sir *W. Thomſon.* In what Manner?

Patten. He appeared among the reſt of the Gentlemen.

Sir. *W. Thomſon.* Was he armed?

Patten. Only his Sword, that I ſaw.

Sir *W. Thomſon.* Pray, what paſſed afterwards?

Patten. We came to *Kelſoe*, and from thence we went to *Jedburg*.

Sir *W. Thomſon.* Where did you go?

Patten. To *Jedburg*.

Sir *W. Thomſon.* What paſs'd there?

Patten. After they came to *Jedburg*, they were alarmed by a Party they thought of the King's Forces; but it happened to be ſome of their own Party.

Sir *W. Thomſon.* What happened on that Occaſion?

Patten. I ſaw the Lords, and among the reſt, my Lord *Winton*, at the Head of ſome Horſemen there drawn up.

Sir *W. Thomſon.* In what Manner?

Patten. The Earl of *Winton* was drawn up with his Men, and the *Scotch Lords* with their Men.

Sir *W. Thomſon.* With what Intent?

Patten. They apprehended General *Carpenter* with the King's Forces was coming to attack them.

Sir *W. Thomſon.* You ſay, my Lord *Winton* marched out at the Head of ſome Horſemen?

Patten. I cannot ſay, I ſaw him march out; but I ſaw him at the Head of ſome Horſe.

Sir *W. Thomſon.* What happened afterwards?

Patten. They returned to *Jedburg*, and ſtaid all Day; and the next Day they marched to *Hawick*.

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Sir *W. Thomſon.* What happpened at *Hawick?*

Patten. At Midnight we were again alarmed with a Party.

Sir *W. Thomſon.* What happened upon that?

Patten. I ſaw my Lord *Winton* in the Street.

Sir *W. Thomſon.* Was there any Preparation made for Defence?

Patten. Yes, they were going out to defend themſelves.

Sir *W. Thomſon.* You ſaw my Lord *Winton* there?

Patten. Yes.

Sir *W. Thomſon.* In what Manner?

Patten. He had his Sword by his Side.

Sir *W. Thomſon.* When you went from that Place, whither did you go then?

Patten. We went to *Langholm.*

Sir *W. Thomſon.* What paſs'd there?

Patten. We continued there till next Morning, when we conſulted whether to march for *England* or for *Scotland*; a Party of Horſe went for *Dumfreiſe.* The *Highlanders,* a great Part of them, went off there, and would not march for *England.*

Sir *W. Thomſon.* Was my Lord *Winton* with them at their going off?

Patten. I ſaw my Lord *Winton* go off, and come up again: I ſpoke to my Lord upon that Account.

Sir *W. Thomſon.* What did his Lordſhip ſay?

Patten. Nothing material; but ask'd me if I knew the Country.

Sir *W. Thomſon.* When the Foot went off at *Langholm,* did my Lord go to them?

Patten. I ſaw him go up to them, and make a Halt.

Sir

Sir *W. Thomſon.* But he came back again.

Patten. Yes.

Sir. *W. Thomſon.* At that Time, if my Lord had had any Inclination to it, whether he might not have gone off.

Patten. Yes; I can't tell my Lord's Inclination; but any Body might have gone off, there was no Reſtraint upon him?

Sir *W. Thomſon.* Whither did you march from *Langholm?*

Patten. To *Langtown.*

Sir *W. Thomſon.* Did any thing happen at *Langtown?*

Patten. We marched through.

Sir. *W. Thomſon.* Whither did you go then?

Patten. To *Brampton.*

Sir *W. Thomſon.* Whither from thence?

Patten. To *Penrith.*

Sir *W. Thomſon.* What happened there?

Patten. There was the *Poſſe Comitatus*; whether that *Poſſe Comitatus* were the Militia, I cannot tell; they were got together, and upon our advancing, they diſper s'd themſelves.

Sir *W. Thomſon.* Where was my Lord *Winton* then?

Patten. I ſaw him among the *Scotch* Lords there after his uſual Manner, on Horſeback, with Sword and Piſtols.

Sir *W. Thomſon.* Was his Sword drawn?

Patten. No.

Sir *W. Thomſon.* Whither did they go then?

Patten. They went to *Appleby.*

Sir *W. Thomſon.* What paſſed at *Appleby?*

Patten. They went from *Appleby* to *Kendall.*

Sir *W. Thomſon.* What happened there?

Patten. A Proclamation was read, as at moſt of the Towns.

Sir

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Sir *W. Thomſon.* Did you ſee my Lord *Winton* at any of thoſe Proclamations?

Patten. No, I did not.

Sir *W. Thomſon.* Where did you go them?

Patten. To *Kirby-Lonſdale.*

Sir *W. Thomſon.* Did any thing happen remarkable there?

Patten. I dined with the *Scotch* Lords at *Kirby.*

Sir *W. Thomſon.* What happen'd there? And what Healths were drank there?

Patten. The Pretender's Health, and Succeſs to our Cauſe, that was the uſual Health.

Sir *W. Thomſon.* Was my Lord *Winton* there?

Patten. Yes, there was my Lord *Kenmure*, *Carnwath*, and the other Lords.

Sir *W. Thomſon.* Did he drink the Health among the reſt?

Patten. All the Table did.

Sir *W. Thomſon.* From thence whither did you go?

Patten. To *Lancaſter.*

Sir *J. Jekyll.* At the Place where you drank Healths, was there any other remarkable Health?

Patten. The uſual Health was, good Succeſs to the Cauſe in Hand.

Lord *High Steward.* Who drank that Health?

Patten. All the Company.

Lord *High Steward.* Who was in Company? Was the Priſoner at the Bar in Company?

Patten. Yes, he was.

Sir *W. Thomſon.* When you came to *Lancaſter*, in what Manner did you enter that Town?

Patten. We entered that Town more regularly than any other we had marced through.

Sir *W. Thomſon.* After what Manner?

Pat-

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Patten. They marched into the Town with their Swords drawn, and the *Highlanders* were drawn round the Cross; the Gentlemen marched into the Town on Horseback; the Pretender was proclaimed there.

Sir *W. Thomson.* You was by when the Pretender was proclaimed?

Patten. Yes.

Sir *W. Thomson.* Was my Lord *Winton* there?

Patten. I cannot say I saw him there: I saw him in the Town at the Head of some Horse with his Sword drawn.

Sir *W. Thomson.* Was there any Cannon seiz'd at *Lancaster?*

Patten. Some Pieces of Cannon were seized.

Sir *W. Thomson.* What did you do with the Cannon?

Patten. We carried them with us to *Preston.*

Sir *W. Thomson.* When there were Prayers in the Parish-Church at *Lancaster*, who was prayed for?

Patten. The Pretender.

Sir *W. Thomson.* Do you know who were present?

Patten. A great many.

Sir *W. Thomson.* Was the Lord *Winton* there?

Patten. I can't tell.

Sir *W. Thomson.* Did you observe at any Time any Force or Compulsion used to detain my Lord *Winton?*

Patten. No, none at all.

Sir *W. Thomson.* Did he shew any Uneasiness, or any Backwardness to go with them?

Patten. I cannot be Judge of my Lord's Uneasiness; it did not appear so.

Sir *W. Thomson.* By whose Directions was the Prayer for the Pretender.

Pat-

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Patten. By Order of Mr. *Forſter.*

Sir *W. Thomſon.* My Lords, we have done with this Witneſs.

Lord *High Steward.* My Lord *Winton*, will you pleaſe to ask this Witneſs any Queſtion?

Lord *Winton.* No.

Att. Gen. My Lords, we deſire to call my Lord *Forreſter.*

Then a Chair was placed for Lord *Forreſter*, near the Clerks Table.

And the Oath was adminiſtred to him by the Lord *High Steward.*

Sir *J. Jekyll.* My Lords, we beg leave to ask this Noble Lord a Queſtion or two: Was your Lordſhip at *Preſton?*

Lord *Forreſter.* Yes, my Lords.

Lord *High Steward.* Your Lordſhip will pleaſe to raiſe your Voice.

Lord *Forreſter.* I was there with the King's Troops, and had the Honour to command Brigadier *Preſton*'s Regiment. We came before *Preſton* on *Saturday*, the 12*th* of *November.*

Att. Gen. Will your Lordſhip acquaint my Lords, what paſs'd at *Preſton* while you was there; whether you was by at *Preſton* when the King's Forces attack'd it; and whether it was defended by the Rebels; and what elſe paſſed there.

Lord *Forreſter.* I was there, and commanded one of the Attacks under Brigadier *Honywood.*

Att. Gen. Was the Town defended by the Rebels; and were any of the King's Officers and Soldiers killed?

Lord *Forreſter.* Yes, a great many.

Att. Gen. Pleaſe to give an Account of what Number.

Lord *Forreſter.* We loſt a great many.

Att.

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Att. Gen. Can you gueſs the Number?

Lord *Forreſter.* No, I cannot exactly tell: A good many; we had 'twixt Sixty and Seventy of the Regiment I had the Honour to Command, killed and wounded.

Att. Gen. How many were killed?

Lord *Forreſter.* About Thirty were killed dead on the Spot.

Att. Gen. How long did that Attack laſt, before they deſired to capitulate?

Lord *Forreſter.* From *Saturday* till *Sunday* Morning, between one and two a Clock.

Sir *J. Jekyll.* I think your Lordſhip had a Command to take Poſſeſſion of the Town?

Lord *Forreſter.* Yes; I took Poſſeſſion of the Church-Yard, *Monday* Morning about Six a Clock.

Sir *J. Jekyll.* Will you pleaſe to give an Account of what you know of the Noble Lord at the Bar, when the Town ſurrendred.

Lord *Forreſter.* The Town ſurrendred at ſix a Clock in the Morning; I came into the Church-Yard, and took Poſſeſſion of it; then I went to the *Mitre-Tavern*, where that Lord, and the reſt of the Lords were; I diſarmed them.

Att. Gen. What Arms did my Lord *Winton* deliver up at that Time?

Lord *Forreſter.* Two Caſes of Piſtols.

Sir *J. Jekyll.* If my Lord hath a Mind to ask any Queſtion of the Noble Lord that hath been examined, we deſire he may do it.

Lord *High Steward.* My Lord *Winton*, will you be pleaſed to ask this Noble Lord any Queſtion concerning this Matter at *Preſton?*

Lord

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Lord *Winton*. I had no Arms; Please to ask him, whether I had Sword or Pistol in my Hand.

Lord *High Steward*. Take my Lord's Question in Writing.

Then the Clerk went and took it.

Question. Whether the Arms your Lordship mentioned to have been delivered to you, whether he had the Arms then about him, or his Lordship did not say they were in the Stable.

Lord *Forrester*. He brought the Arms to me himself, and gave them me out of his own Hands.

Lord *High Steward*. My Lord says you brought the Arms to him your self, and gave them out of your own Hands.

Lord *Forrester*. I got so many of them, that I should not have made any Distinction of his from the rest; but that I remember he gave me his Arms out of his own Hands, and desir'd me to give them to my Lord *Kimmergem*.

Lord *High Steward*. You desired my Lord *Forrester* to give them to my Lord *Kimmergem*.

Lord *High Steward*. Another Question propos'd is, Whether my Lord *Winton* did not give Orders to his Servant to bring the Arms out of the Stable, and to give them my Lord *Kimmergem*?

Lord *Forrester*. I believe he did bring them out of the Stable.

Lord *High Steward*. My Lord believes you did bring them out of the Stable.

Lord *Winton*. I desire he may be asked whether I had a Sword about me.

Lord *High Steward*. My Lord *Forrester*, the Question is, Whether your Lordship found a Sword about my Lord *Winton*?

Lord

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Lord *Forreſter*. I did not ſee any Sword that he had; he had a great Coat on, and might have had a Sword under that, but I ſaw none.

Lord *High Steward*. My Lord *Forreſter*, did the Priſoner at the Bar deliver himſelf and his Arms to your Lordſhip, as one of thoſe in the Surrender?

Lord *Forreſter*. I took it ſo.

Sir *J. Jekyll*. We beg leave to call General *Carpenter*, and deſire he may be ſworn in his Place, and give your Lordſhips his Evidence.

General *Carpenter* was ſworn in his Place.

Proclamation for Silence as uſual.

Sir *J. Jekyll*. Mr. *Carpenter*, pleaſe to give my Lords an Account when you came to *Preſton*, and what happen'd there.

Gen. *Carpenter*. I came to *Preſton* on *Sunday*, the 13*th* of *November* laſt: The Troops under Mr. *Wills* had been there the Afternoon before. I got there about Ten a Clock on *Sunday* Morning, with three Regiments of Dragoons; and there had been no Intercourſe nor Meſſage paſſed before I came.

Att. Gen. Pleaſe to inform my Lords, what paſs'd there after you came to *Preſton*.

Gen. *Carpenter*. After I came, the Rebels ſent out to know what Terms they might expect; and were anſwer'd, None but at Diſcretion. They ſoon after ſent out one Captain *Dalzell*, to deſire a Ceſſation till next Morning; upon which I ſent Colonel *Churchill* to tell them, I agreed to a Ceſſation, provided they ſent out an *Engliſh* Lord and a *Scotch* Lord, as Hoſtages: I named my Lord *Derwentwater*, and my Lord *Kenmure*. Captain *Dalzell* ſaid, he thought my Lord *Kenmure* would not come out. I named then Brigadier *Mackintoſh*; he alſo thought he would

would not come out. I was unwilling to make great Difficulties, it growing towards Night; and ſaid, either of the *Mackintoſhes*, and an *Engliſh* Lord. And he brought out my Lord *Derwentwater*, and Colonel *Mackintoſh*, as Hoſtages, that they ſhould make no Attempt to eſcape, nor any Works for Defence in the Town.

Att. Gen. Pray, Sir, acquaint my Lords, who you ſent in with Colonel *Churchill*.

Gen. *Carpenter.* Colonel *Cotten*.

Att. Gen. When did they agree to the Surrender of the Place?

Gen. *Carpenter.* Not till the next Morning. The Hoſtages were, that none ſhould attempt to eſcape, nor any Defences ſhould be made in the Town till the next Morning, at which Time they would determine whether they would ſurrender or not.

Att. Gen. I deſire you to acquaint my Lords, whether theſe were all the Terms offered, or whether there was any Hopes of Mercy given them?

Gen. *Carpenter.* I gave them none at all my ſelf, and it is very unlikely any Body elſe ſhould. I commanded in Chief his Majeſty's Forces there: No Body ought to have done it; and if any Officer whatſoever took upon him ſo to do, without my Order or Leave, it was very unanſwerable by the Rules and Diſcipline of War, and what he cannot anſwer: I hope no Body did, I am ſure I gave no ſuch Directions; Colonel *Churchill* can acquaint your Lordſhips, whether I directed him to mention any other Conditions to them, than at Diſcretion.

Sir. *J. Jekyll.* Did you hear any other Officer give them any Hope or Expectation of Mercy?

Gen. *Carpenter.* No, I did not.

Sir

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Sir. *J. Jekyll.* If my Lord *Winton* hath any Questions to ask this Honourable Person, he may do it.

Lord *High Steward.* My Lord *Winton*, now is your Time, if you will ask any Question of General *Carpenter*.

Lord *Winton.* Whether I was concerned in making any ——

Lord *High Steward.* I do not hear the Question. —— Then the Clerk was sent down to take it from him in Writing.

And the Question being brought up to the Lord *High Steward* by the Clerk,

Lord *High Steward.* The Question my Lord asks is, Whether he was concern'd in making any Capitulation, or knew any thing about it?

Gen. *Carpenter.* Not that I know of; it is impossible for me to know, except by Hearsay. He was not the Person treated with: I treated with my Lord *Derwentwater*, and one of the *Mackintosh's*; so that I know nothing of his being concern'd in any Manner of Treaty.

Lord *High Steward.* You hear the Answer.

Sir *J. Jekyll.* We beg leave to call General *Wills*.

Lord *Winton.* I desire to ask my Lord *Forrester* a Question.

Lord *High Steward.* My Lord *Winton* desires to propose a Question to my Lord *Forrester*.

Sir *J. Jekyll.* Though that be out of Method, yet we don't oppose it.

Lord *High Steward.* Bring up the Question. My Lord, the Question my Lord *Winton* proposes is, Whether he had any Sword or Arms, when he first saw your Lordship at *Preston*?

Lord *Forrester.* I do not remember I had a Sword from him; I cannot tell whether he had

a Sword about him, for he had a great Coat on; but I remember I took none from him; I had only the two Cases of Pistols which he gave me.

Lord *High Steward*. He could not tell whether you had a Sword about you, you had a great Coat, that he could not well see; but he remembers he took none from you, only the two Cases of Pistols which you gave him.

Lord *High Steward*. Who do you call next?

Sir *J. Jekyll*. My Lords, We desire that General *Wills* may be sworn.

He was sworn accordingly.

Sir *J. Jekyll*. Mr. *Wills*, pray give my Lords an Account when you came before the Town of *Preston*, and what happen'd there.

Gen. *Wills*. My Lords, I had the Honour to Command the King's Troops that attack'd the Rebels at *Preston*; I came before that Town the 12*th* of *November* last, about One a Clock, and ordered two Attacks upon the Town; that Attack which lead to *Wiggan*, was commanded by Brigadier *Honywood*, who beat the Rebels from their first Barricade, and took Possession of some of the Houses in the Town; the other Attack, which lead to *Lancaster*, was commanded by Brigadier *Dormer*, who lodg'd his Troops nigh the Barricade of the Rebels. The next Day, about Two a Clock, Mr. *Forster* sent out one Mr. *Oxborough*, an *Irish* Man, offering to lay down their Arms, and submit themselves, and hoped that I would recommend them to the King for Mercy; which I refused, and told them, I would not treat with Rebels, for that they had killed several of the King's Subjects, and that they must expect to undergo the same Fate; upon which he said, that as I was an Officer,

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Officer, and a Man of Honour, he hoped I would shew Mercy to People, who were willing to submit: Upon which I told them, all I would do for them was, that if they laid down their Arms, and submitted Prisoners at Discretion, I would prevent the Soldiers from cutting them to Pieces, till I had further Orders; and that I would give them but one Hour to consider of it, and sent him back again into the Town, to acquaint *Forster* of it: Before the Hour was expir'd, they sent out Mr. *Dalzell*, Brother to the Earl of *Carnwath*, and he wanted Terms for the *Scotch*. My Answer was, that I would not treat with Rebels, nor give them any other Terms, than what I had before offered them: Upon which it was desired, that I would grant further Time till Seven a Clock next Day, to consult the best Method of delivering themselves up. I agreed to grant them the Time desired, provided that they threw up no new Intrenchments in the Streets, nor suffer'd any of their People to escape; and that they sent out the Chief of the *English* and *Scotch*, as Hostages for the Performance; and I sent in Colonel *Carten* to bring them out, who brought out the Earl of *Derwentwater* and Mr. *Mackintosh*. The next Day about Seven a Clock, Mr. *Forster* sent out to let me know, that they were willing to give themselves up Prisoners at Discretion, as I had demanded. Mr. *Mackintosh* being by when the Message was brought, said, he could not answer that the *Scotch* would surrender in that Manner; for that the *Scotch* were People of desperate Fortunes; and that he had been a Soldier himself, and knew what it was to be a Prisoner at Discretion: Upon which I said, Go back to your People again,

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and I will attack the Town; and the Conſequence will be, I will not ſpare one Man of you. *Mackintoſh* went back; but came running out immediately again, and ſaid, that the Lord *Kenmure*, and the reſt of the Noblemen, with his Brother, would ſurrender in like Manner with the *Engliſh*.

Sir *J. Jekyll.* When the Attack was made by the King's Forces, whether any, and how many were killed?

Gen. *Wills.* I believe between Sixty and Seventy, but few of the Horſe; there were killed and wounded about a Hundred and Thirty.

Att. Gen. If you pleaſe to acquaint my Lords, whether any of the Rebels came and treated with you, or if you gave them any Encouragement to hope for Mercy?

Gen. *Wills.* All the Terms I gave them was, that I would ſave their Lives from the Soldiers till further Orders, if they ſurrender'd at Diſcretion. I deſire to explain the Meaning of ſurrendring at Diſcretion; which is, that it is then in our Power to cut them all to Pieces; but I would give them their Lives till further Order; for I could have cut them to Pieces immediately after they are made Priſoners at Diſcretion, by the Rules of War; and if they did not comply, I would renew the Attack, and not ſpare a Man.

Lord *High Steward.* You told them, that if they did not comply, you would renew the Aſſault.

Gen. *Wills.* Yes; and not ſpare a Man of them.

Sir *J. Jekyll.* Did you give your Officers any Directions to give any other Terms?

Gen. *Wills.* No, I did not.

Lord

Lord *High Steward*. Then you gave no Directions to any other Officer to give other Terms, than you your self had offer'd?

Gen. *Wills*. No, I did not.

Mr. *Cowper*. Was there any other but these two, Colonel *Churchill* and Colonel *Cotten*, sent in by you, or by General *Carpenter*?

Gen. *Wills*. Yes; Colonel *Nassau*, to bid our own People forbear firing.

Mr. *Cowper*. Had Colonel *Nassau* any Authority to treat?

Gen. *Wills*. No; he went in only to bid our Troops to forbear firing, and order Colonel *Cotten* to come out with the Hostages.

Sir *J. Jekyll*. You say the Rebels desired you to recommend them to the King's Mercy; Who made that Proposition?

Gen. *Wills*. One *Oxborough*.

Sir *J. Jekyll*. Had you any other Proposition by any other?

Gen. *Wills*. Mr. *Dalzell*, Brother to my Lord *Carnwath*, for the *Scotch*: I refused him likewise; and told him, I would treat with no Rebels, nor give them any Quarter.

Sir. *J. Jekyll*. If my Lord at the Bar will ask this Honourable Gentleman any Question, now is the Time.

Lord *High Steward*. My Lord *Winton*, the Clerk is sent down to you again; if you have any Question, he will take it.

The Clerk return'd with the Question to my Lord *High Steward*.

Lord *High Steward*. The Question my Lord proposes to General *Wills* is, Whether you, General *Wills*, gave any Summons to surrender, before you made the first Attack; or if you did

not make the Attack without any Summons at all?

Gen. *Wills.* When I was viewing the Town, they shot two of my Dragoons, and I did not summons them.

Another Question taken by the Clerk, and brought up.

Lord *High Steward.* Another Question my Lord desires to be asked is, Whether you offered to prevent the Forces from falling upon the Gentlemen at *Preston*, provided they surrendred at Discretion?

Gen. *Wills.* Before ever I had drawn up the Troops ——

Lord *High Steward.* The Question is, Whether you offered to prevent the Forces falling upon the Gentlemen at *Preston*, provided they surrendred at Discretion?

Gen. *Wills*, Yes, my Lords, I did hinder the Troops from falling upon them, after they offer'd to surrender.

Another Question brought up by the Clerk.

Lord *High Steward.* General *Wills*, my Lord desires you may be ask'd, what you know, or have been inform'd of his Lordship's being against coming to *England*; or of my Lord's being against fighting with any of yours, or General *Carpenter*'s Troops.

Gen. *Wills.* I never knew my Lord *Winton*, nor saw him till four Days after he was taken at *Preston*; so that I can say nothing to that I don't know any thing of.

Lord *Winton.* I desire General *Carpenter* may be asked the same Question.

Lord *High Steward.* Do you know any thing, or have heard, that my Lord *Winton* was against coming

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coming into *England*, or fighting the King's Forces?

Gen. *Carpenter*. My Lords, I heard that at *Jedburg* they held a Council of War, the chief Officers, *&c.* this is only Hearſay, I ſpeak not of my own Knowledge.

Sir *J. Jekyll*. For the ſake of Evidence, it is incumbent on us to deſire, that my Lord confines himſelf to ask the General what he knows, and not to what he heard ſaid.

Att. Gen. We have two Witneſſes more, the Colonels that were ſent into the Town by the two Generals, Colonel *Churchill* and Colonel *Cotton*.

Colonel *Churchill* was ſworn.

Mr. *Cowper*. The Queſtion propos'd is, Whether you was ſent into *Preſton*, and by whom?

Col. *Churchill*. I came up to *Preſton* on *Sunday* Morning, under General *Carpenter*'s Command, about Ten a Clock; about One they ſent out to Capitulate; about Five I was ſent in by General *Carpenter*, their Requeſt being, that they might have Time till next Day to conſider, whether they ſhould ſurrender or not. My Directions were, they ſhould have that, upon Condition they ſent out Hoſtages, that none of them ſhould attempt to eſcape, and that no Defence ſhould be made in the Town. The People named to me by General *Carpenter*, were my Lord *Derwentwater*, or my Lord *Widdrington*; and my Lord *Kenmure*, or *Mackintoſh*, was mentioned for the *Scotch*. I directed them to ſend the Hoſtages to me: They could not find my Lord *Derwentwater* nor *Widdrington*, and *Mackintoſh* was gone to Bed. A little before Eight I went with them, and told them the Terms I was to deliver to them, that they

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were to throw up no Works to fortify themſelves, and ſhould anſwer for the People, that none of them ſhould eſcape. My Lord *Derwentwater* and *Mackintoſh* went out with me; I carried them to the two Generals there, and at Seven a Clock next Morning they ſurrendred themſelves.

Mr. *Cowper*. Pleaſe to give me Leave to ask you, Whether you had any Commiſſion from the General that ſent you into the Town; or whether you of your ſelf, without ſuch Commiſſion, gave them any Hopes of Mercy?

Col. *Churchill*. I had not any Power to do it; and was ſo far from doing it, that I don't remember a ſingle Syllable was mentioned either on our Side or theirs about it.

Mr. *Cowper*. Did you at any other Time hear any other Officers give them ſuch Aſſurance?

Col. *Churchill*. I never heard a ſingle Word like it.

Att. Gen. Who did you treat with?

Col. *Churchill*. The Body I treated with, carried me to Mr. *Forſter*, and then to my Lord *Kenmure*. I deliver'd my Meſſage to Mr. *Forſter*; I did not know any *Scotch* Lord but *Kenmure*.

Att. Gen. Who was preſent beſides my Lord *Kenmure*?

Col. *Churchill*. I ſaw a great many, but I did not know particularly any.

Att. Gen. The next is Colonel *Cotten*, who was ſent in by General *Wills*. We deſire Colonel *Cotten* may be ſworn.

He was ſworn accordingly.

Att. Gen. We deſire to ask Colonel *Cotten*, Whether he was ſent into *Preſton* by General *Wills*; and what Inſtructions were given him when he went in?

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Colonel *Cotten*. I was sent into the Town by General *Wills* at their Desire, they having Terms to offer: I told them, we could give them none; they urged, they had Disputes amongst the *Scotch* and *English*, and desired till the next Morning to reconcile them. General *Wills* sent me again into the Town, to allow them that Time, provided that the Lords would give their Words, that they would throw up no Works for their Defence from that Time, and do their utmost, that none of their People should make their Escape; and the Lords did give their Words, and the Lord at the Bar was present.

Att. Gen. I desire you would acquaint my Lords, upon what Terms they surrendred.

Col. *Cotten*. I had no Power from Mr. *Wills* to promise them any Terms, nor I did not.

Sir *J. Jekyll*. Did you acquaint them, you had no Power to offer them any Terms?

Col. *Cotten*. I did.

Att. Gen. Who did you acquaint?

Col. *Cotten*. All the Lords, and the People that had any Influence over the common Men.

Sir *J. Jekyll*. Was the Noble Lord at the Bar amongst them?

Col. *Cotten*. He was.

Sir *J. Jekyll*. Was there any Overtures made of obtaining the King's Mercy?

Col. *Cotten*. I had no such Orders from Mr. *Wills*, and I did not offer it, neither directly nor indirectly.

Att. Gen. My Lords, I think it hath been desired to call Brigadier *Munden*, who speaks only as to the Attack; and I think, my Lords, if this Evidence need to be corroborated, we shall desire to call another Evidence, who was with

with General *Wills* all the Time the Overtures pass'd.

Sir *J. Jekyll.* My Lords, if the Lord at the Bar hath any Question to ask Colonel *Cotten*, we desire he may be indulged.

Lord *Winton.* I would know, whether they did not take Prisoners, and kill them, notwithstanding the Capitulation?

Lord *High Steward.* The Question my Lord desires may be ask'd is, Whether you did not take Prisoners, and kill them, notwithstanding the Capitulation?

Col. *Cotten.* My Lords, upon my coming out of the Town, though the Lords had engaged to prevent any of their People making their Escape, we were alarm'd with an Account, that several were attempting it; and about Six of those who were endeavouring to Escape, were cut to Pieces. Upon this Breach of their Parole, Colonel *Churchill* and my self were sent in to demand Hostages, and brought out Lord *Derwentwater* and Mr. *Mackintosh.*

Att. Gen. We desire Brigadier *Munden* may be sworn.

He was accordingly called, and sworn.

Att. Gen. We desire Brigadier *Munden* may be asked, Whether he was sent with these two Colonels into the Town, and what Directions was given them?

Lord *High Steward.* You hear the Question, please to give your Answer.

Brigadier *Munden.* I humbly apprehend I am called to give some Account of the Attack at *Preston*, which I will do in as few Words as I can. I am first to tell your Lordships, after the Rebels demanded an Audience of General *Wills*, their first Demand was for Terms: The Answer

Anſwer they received was, that General *Wills* would not treat with Rebels; but if they ſurrendered as Priſoners at Diſcretion, they ſhould have their Lives ſpared till his Majeſty's Pleaſure was known. They ask'd, if thoſe were the only Terms? It was anſwer'd, Yes. Afterwards this Gentleman went into the Town, who had an Hour's Time allowed him to conſider of it. I remember his inſiſting upon Terms; but all the Anſwer Mr. *Wills* gave them was, If he had Inclination, he had no Power to give them any, otherwiſe than ſaving their Lives till his Majeſty's Pleaſure was further known. If they expected other Terms, they might return into the Town immediately, and he would attack them, and cut them to Pieces. After this, the Gentleman went into the Town; my Lord *Derwentwater* and Mr. *Mackintoſh* came out to us; Mr. *Mackintoſh* and my Lord *Derwentwater*, and I, heard them frequently repeat their Requeſt to the General for Terms; and I heard *Mackintoſh* give a particular Account of the Bravery and Hardineſs of their Troops. Mr. *Wills* told him, he might have prov'd and try'd them, if he had pleas'd; and then it would have been ſeen, whether the King's Troops, or a Parcel of Rebels, would have acted the braver Part. Mr. *Wills* receiv'd them with the utmoſt Deteſtation and Contempt, and gave them no Hope of Mercy, either directly or indirectly.

Att. Gen. Did you ever hear any other of the Officers offer them any other Terms?

Brig. *Munden.* No, I did not hear any. I heard the Inſtructions that were given to Colonel *Cotten* by General *Wills*; and when Mr. *Cotten* came out of the Town the third Time, which

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which was when he went to take their Parole of Honour.

Sir *J. Jekyll.* Did my Lord *Winton* come to give his Parole?

Brig. *Munden.* When Colonel *Cotten* came out, I very well remember he ſaid, he had receiv'd his Parole of Honour among the reſt.

Sir *J. Jekyll.* If my Lord at the Bar hath any Mind to ask this Honourable Perſon, Brigadier *Munden*, any further Queſtions, we have done with him.

Lord *High Steward.* My Lord *Winton*, Do you ask this Witneſs any Queſtion?

Lord *Winton.* No.

Sir *J. Jekyll.* We that are entruſted by the Houſe of Commons, have no more Evidence to offer to your Lordſhips.

Lord *High Steward.* My Lord *Winton*, the Gentlemen of the Houſe of Commons have done with the Evidence they propoſed to call againſt you; therefore it is your Lordſhip's Time to open what Evidence you have, or if you have made any Obſervations on the Evidence given againſt you, to deliver them, or to call your own Witneſſes; — Take your own Method.

Proclamation was made for Silence as uſual; and after ſome Pauſe,

Lord *High Steward.* My Lord *Winton*, I acquainted your Lordſhip, that the Gentlemen of the Houſe of Commons, who manage the Evidence to ſupport the Impeachment, have done with giving their Evidence; they deſign to give no more againſt you; therefore this is the Time that is proper for your Lordſhip to make your Defence; you are to do it in your own Method, either by calling your Witneſſes,

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ſes, or making ſuch Obſervations in your Defence, as you think proper.

Lord *Winton.* Pleaſe to allow me ſome Time, for my Witneſſes are not yet come. I have uſed all poſſible Endeavours to get them; pleaſe to allow me till this Day Month till they come up. It will ſignify nothing to examine any Witneſſes after I am dead. I never ſaw my Council but once, that they might inſtruct me what I have to ſay. My Lords, I am informed they will be here ſome Time next Week.

Lord *High Steward.* What your Lordſhip ſaid, is not heard.

Lord *Winton.* I ſaid, I never ſpoke to any of my Council, and that but once I have ſent to my Council; I never ſaw them.

Proclamation for Silence was made as uſual.

Lord *High Steward.* My Lord, Offer what you have to ſay now, while the Court is in Silence.

Lord *Winton.* My Lords, the moſt material of my Witneſſes are not come up, they will be here ſome time next Week; I have not talk'd to my Council.

Lord *High Steward.* Your moſt material Witneſſes are upon the Road, you deſire Time till they come up; the Effect of your Petition to the Houſe of Lords, that is what you offer again?

Lord *Winton:* Yes, my Lords.

Att. Gen. We think it our Duty to acquaint your Lordſhips, that what that Noble Lord inſiſts upon now, is out of Time. If he had any Reaſons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is, to let your Lordſhips know, that when the Evidence

dence for the Profecution is given, the Priſoner is not to have Time to delay the Proceedings, not any longer Time; he ought to have applied before. We muſt ſubmit it to your Lordſhips.

Mr. *Comper.* This Requeſt of his Lordſhip, the Priſoner at the Bar, ſeems to concern the Methods of Juſtice, and is, we think, of great Conſequence, with reſpect to the Commons. My Lords, we ſhould have been very far from preſſing to bring on his Lordſhip's Trial ſooner than might have been thought conſiſtent with the Rules of Juſtice: But when we conſider the Time your Lordſhips have allowed him, upon ſeveral Applications he has made to your Lordſhips for that Purpoſe; when we all know he has had Notice ever ſince he was ſeized, and made Priſoner at *Preſton*, that a Defence would be neceſſary, and that it concerned him to provide for it; when we reflect how long it is ſince the Commons exhibited their Impeachment againſt him, it is ſurprizing after all to find his Lordſhip alledge, that he hath not had Time to bring up his Witneſſes. With what View his Lordſhip is adviſed to make this Defence, may be eaſily explained; it is, my Lords, to move the Compaſſion of the People, and, I fear, to traduce the Juſtice of your Lordſhips Proceedings. Surely it muſt be confeſſed, that he hath had more than Time ſufficient, more than any one in the like Circumſtances hath been allowed by your Lordſhips great Indulgence; and yet at laſt to have nothing to offer, but that his Witneſſes are not come, without attempting to produce one ſingle Witneſs to prove that he has, or expects any one Witneſs to appear for him.

My

My Lords, the ſtated Rules of proceeding in Trials of this Nature, ought to be ever ſacred; and I don't know that any one Priſoner hath a Right to be indulged in Methods unknown to the Conſtitution.

My Lords, I believe when a Priſoner impeached by the Commons, puts himſelf upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatſoever. Sure I am, it is inconſiſtent with the Proceedings of all other Courts of Juſtice.

Your Lordſhips, as we are informed, lately denied the Priſoner any further Time; and if it was then thought not proper to be granted, certainly, now he hath put himſelf upon his Trial, and ſtands upon his Defence at your Lordſhips Bar, he ſhall not be indulged to making the ſame Requeſt.

My Lords, whatever Compaſſion we may have for this unhappy Lord; yet the Commons, when they reflect that the Methods and Forms of Juſtice, are eſſential to Juſtice it ſelf, they then think themſelves obliged to oppoſe a new Attempt, and hope the Trial ſhall proceed.

Lord *Winton*. My Witneſſes are not come up; they will be up about *Monday* or *Tueſday* next. I have had no longer Time than ſince the 10*th* of *February* laſt, to bring up my Witneſſes, when it was very bad traveling.

A Motion was made to Adjourn.

Lord *High Steward*. My Lord *Winton*, your Lordſhip hath heard the Commons oppoſe your Requeſt; you have heard the Reaſons given for ſuch Oppoſition: Doth your Lordſhip, having heard the Reaſons, yet inſiſt upon it, or do you withdraw your Requeſt?

Lord *Winton*. I inſiſt upon it, my Lords.

Then

Then the House was Adjourned to the Chamber of Parliament.

And being returned in about an Hour, and the House resumed, and Proclamation made for Silence, as usual;

Lord *High Steward*. My Lord *Winton*, I am commanded by the Lords to let you know, that they have considered your Request; and that they are of Opinion, it is not now consistent with the Rules of Justice, to allow you further Time for sending for your Witnesses; therefore you are to proceed in your Defence. I am likewise to acquaint you, that, in respect to the Lowness of your Voice, the Lords have ordered a fit Person to stand by you, (after he is sworn) to report truly to their Lordships what you say during your Trial.

Is it your Lordships Pleasure, that one of your Lordships Clerks be appointed to stand by, and report to your Lordships?

Lords. Yes, Yes.

A Clerk was sworn to make true Report; but my Lord *Winton* began to speak so very low, as scarce any could hear. Whereupon

Sir *J. Jekyll*. My Lords, I perceive it is your Lordships Pleasure to indulge the Lord at the Bar, to have a Person sworn to report truly to your Lordships, what he shall say in his Defence; but it is not your Lordships Intention, that the Lord at the Bar should speak so low, as it is impossible for us, or any near him, to hear what he says.

Lord *High Steward*. My Lord *Winton*, speak as loud as you can, so as the Managers may hear; he is only to help your Voice, so as their Lordships may hear.

Clerk

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Clerk from Lord *Winton.* I think it very hard, and great Injuſtice, that I ſhould not be allowed Time to make my own Defence; and that my Witneſſes ſhould not come up; and that I ſhould be ty'd down to a fooliſh Form, which I am not accuſtom'd to, when I am in Danger of my Life.

Then the Houſe was Adjourned to the Chamber of Parliament.

Friday, March 16. *The Second Day.*

Lord *High Steward.* THE Houſe is reſumed. Do your Lordſhips give the Judges Leave to be covered?

Lords. Ay, Ay.

Proclamation made for Silence, and another to bring forth the Priſoner, as uſual.

The Priſoner brought to the Bar, and kneels.

Lord *High Steward.* My Lord *Winton*, you may riſe. —— My Lord *Winton*, you may proceed upon your Defence.

The *Clerk* order'd to report, as before.

Lord *High Steward.* I again remind your Lordſhip, you are to ſpeak in your Defence as loud as you can; if your Voice is not heard, he is ready to report to the Lords what you ſay; but you muſt ſpeak as loud as you can.

Clerk from Lord *Winton.* My Council is ready here to ſpeak for me.

Lord *High Steward.* My Lord, I would not preſume to make an Anſwer, but that it is known Law, that undoubtedly your Lordſhip cannot have Council, by the Law of the Land, to ſpeak in your Defence, unleſs it be to Matter of Law; for the Law ſuppoſes every Man

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ſufficient to anſwer for himſelf, as to Matter of Fact.

Clerk from Lord *Winton.* My Lords, I am not accuſtomed to ſpeak on ſuch Occaſions; therefore I hope your Lordſhips will allow my Council to ſpeak for me.

Lord *High Steward.* My Lord, I muſt acquaint you, that the Law in this Caſe admits of no Exception; but holds to the general Rule.

Clerk from Lord *Winton.* My Lords, I don't underſtand the Law, I am perfectly a Stranger to the Cuſtoms of the Houſe; therefore hope your Lordſhips will allow my Council, that know them, to ſpeak for me.

Lord *High Steward* to the *Clerk.* You let your Voice fall.

Clerk from Lord *Winton.* I am not accuſtomed to the Practice of this Houſe; therefore I deſire that your Lordſhip's would pleaſe to allow other People to ſpeak for me, that underſtand them.

Lord *High Steward.* My Lord *Winton*, Your Council are not to be allowed to ſpeak for you, as to thoſe Things that are Matter of Fact, in an Impeachment of High Treaſon, but to what is Matter of Law; and I believe if you ask your own Council, they will tell you, as the Law ſtands, they cannot be heard for you here, as to Matter of Fact.

Clerk from Lord *Winton.* The Council will inform your Lordſhips of the Matter of Fact; and they know how better to expreſs it than I do.

Lord *High Steward.* My Lord *Winton*, Have you any Witneſſes to call in your Defence?

Clerk

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Clerk from Lord *Winton*. I told your Lordſhips Yeſterday, my moſt material Witneſſes were not yet come up.

Lord *High Steward*. My Lord, I acquainted your Lordſhip Yeſterday, and now would remind you of your own Petition, exhibited to the Houſe of Lords, wherein you acknowledge, that a great many of your Witneſſes were come up; thoſe Witneſſes were arrived, you only then pretended Four were not yet come. Doth your Lordſhip deſign to make no manner of Uſe of thoſe great Numbers of Witneſſes that you admitted were come?

Clerk from Lord *Winton*. Without thoſe, they would not be of ſuch an Effect — They would ſerve for nothing without thoſe Witneſſes coming.

Lord *High Steward*. My Lord *Winton*, your Lordſhip will pleaſe to obſerve, the Lords wait with great Patience, to ſee if your Lordſhip would be better adviſed, and go into your Defence.

Clerk from Lord *Winton*. I don't really know, my Lords, what to ſay for it; for I do not underſtand the Proceedings of this Houſe. It was always the Cuſtom, in any Court where I was, for People to be allowed to ſpeak, or the Council be allowed to ſpeak for me; for I am not accuſtomed to ſpeak any manner of Way in my own Defence; therefore I hope you will allow my Council to ſpeak for me. My Council have a Point of Law to ſpeak to; they ſay ſo, but I know nothing of it.

Lord *High Steward*. My Lord *Winton*, your Council have had Acceſs to you; and though your Lordſhip cannot ſpeak and argue to the Point of Law; cannot your Lordſhip propoſe what the Queſtion is?

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Clerk from Lord *Winton*. It is impoſſible for me to do a thing I do not underſtand; I don't know what the Point of Law is, no more than a Man that knows nothing about it.

When ſome laugh'd.

Lord *Winton*. I am only ſpeaking in my own Defence; I don't expect to be laugh'd at.

Lord *High Steward*. I think his Lordſhip does obſerve well; I hope every one will forbear that.

Lord *High Steward*. Won't your Lordſhip be pleaſed to name what Matter the Queſtion concerns?

Clerk from Lord *Winton*. It will be ſomething about the Trial; no doubt ſomething of what the common People have been ſpeaking about —— It is, no doubt, in Anſwer to the Managers of the Houſe of Commons. I have not ſeen my Council ſince I was laſt here in the Houſe; I have been kept cloſe Priſoner all the Time, and no Body came near me; nor had I any Time to ſpeak with any Body, particularly with my Council; ſo that I have not had Time to be exactly informed of all the Points of Law they have to plead. The Council will tell themſelves what Point of Law they have to plead.

Lord *High Steward*. My Lord *Winton*, regularly you ſhould propound your own Queſtion before your Council ſpeak. Before it appears to be a Point of Law, it is not fit for your Council to be heard.

Clerk from Lord *Winton*. It is impoſſible I ſhould direct a Council, I, that don't underſtand Law: I can't introduce a Point of Law; my Council will ſpeak to the Point of Law.

Lord

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Lord *High Steward*. My Lord *Winton*, Did not you ſpeak to your Council laſt Night?

Clerk from Lord *Winton*. I could not.

Lord *High Steward*. Why?

Clerk from Lord *Winton*. Becauſe it was late when I went from hence; and your Lordſhips know I am a cloſe Priſoner in the Tower; and was lock'd up, and could not ſee them. I ſee no Body but the Guards.

Lord *High Steward*. Hath not your Lordſhip ſeveral Times ſeen your Council, as often as you required an Order for ſo doing?

Clerk from Lord *Winton*. I never ſaw my Council but once, before I gave in my Anſwer.

Lord *High Steward*. Did you deſire to ſee them oftner?

Clerk from Lord *Winton*. My Lords, my Sollicitor ſpoke to them; and my Witneſſes not being come up, it was needleſs for me to ſpeak to my Council, before that they might know what the Witneſſes had to ſay, and ſo might draw up the State of the Queſtion. I did not doubt but the Lords would have given me more Time; and therefore I was not ſo deſirous to ſee my Council, as I would have been, if I thought I ſhould have been ſo much crampt in Time.

Mr. *Cowper*. My Lords, I had the Honour to receive the Commands of the Commons, to reply to his Lordſhip's Defence; and it was reaſonable to expect, that the Priſoner, having pleaded Not Guilty to the Impeachment, would have attempted to give ſome Evidence in Support of his Plea; but ſince it ſeems to be his Lordſhip's Reſolution not to enter into a Defence; I think it my Duty to ſay ſomething to your Lordſhips upon this unexpected Occaſion. Such is the

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Treaſon, and ſo full the Evidence to prove it, that I think his Lordſhip's Behaviour, unaccountable as it is, more to his Purpoſe, than any other could have been. My Lords, I am very unwilling to ſpeak my own private Sentiment of his Lordſhip's preſent Conduct, although the Obſervations I could make ariſe out of his Lordſhip's Anſwer to the Impeachment: Whoever ſhall read, and conſider it, will find my Lord *Winton* not denying, but confeſſing the ſeveral Overt-Acts of Treaſon laid to his Charge; and then drawing a falſe Concluſion, that he is not Guilty, however, of the Treaſon whereof he is accuſed. He denies, that what he did, was done with a traiterous Intention; and ſays very emphatically, that the pure Streams of Loyalty, which have always run in the Blood of his Anceſtors, are derived to him uncorrupted; and thus, my Lords, a Popiſh Pretender being the Object of his Lordſhip's Loyalty, he thinks he may be guilty of the whole Impeachment, without being a Traytor. This is the true State of the Caſe. It ſeems to me, his Lordſhip is determined to maintain his Point; and how far he may think it proper to acknowledge your Lordſhips Juriſdiction, I know not. My Lords, as to the Impeachment which the Commons, with great Juſtice, have exhibited againſt this Priſoner, your Lordſhips have obſerved, that the ſeveral Treaſons therein contained, have been fully proved; I am unwilling, in a Caſe ſo plain, and where no Defence has been, or can be made, to waſte your Lordſhips Time. Your Lordſhips have heard, in the Courſe of the Evidence which we have produced, that this Lord departed from his Seat of *Seaton* Houſe, with about Fourteen of his own Servants, free and unconſtrained; that

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that he joined others of the Rebels at *Moffett*, at which Place his Lordſhip was pleaſed to form a Troop, which from thenceforth was called the Earl of *Winton*'s Troop. The Priſoner had the Command of it; and for Fear his Zeal for the Pretender ſhould paſs unobſerved, his own Servants rid in his own Troop in his own Livery; and I may add, that it appears his Lordſhip's Troop was paid after the Rate of Two Shillings *per diem* each Man, by his Lordſhip's Order, and with his own Money. From the Town of *Moffett*, which I mentioned, your Lordſhips had an Account of many Marches and Countermarches; his Lordſhip and the Rebels under him, every where increaſing in their Numbers, every where declaring and proclaiming the Pretender to his Majeſty's Crown, as King of theſe Realms. And, my Lords, I may venture to ſay, it appears thro' the whole Courſe of the Evidence, that no one was more zealous and active than the Priſoner. My Lords, ———

Lord *Guilford*. I am very ſorry to interrupt that Gentleman; but I think it proper, before the Houſe of Commons ſum up their Evidence, to move your Lordſhips to Adjourn to the Houſe of Lords.

Then the Houſe was Adjourned to the Chamber of Parliament; and after about Half an Hour returned, and the Houſe was reſumed.

And Proclamation for Silence being made as uſual.

Lord *High Steward*. My Lord *Winton*, I am order'd by their Lordſhips to acquaint you, that they are yet ready to hear any thing that you have to ſay in your Defence, by Way of Obſervation upon what hath been proved a-

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gainſt you, or alledged againſt you, or otherwiſe; they are likewiſe ready to hear any Witneſſes you are pleaſed to call or produce; but then I am to acquaint your Lordſhip, that if you neglect this Opportunity now given you, then it is their Lordſhips Pleaſure, that I ſhould ſignify to the Managers of the Houſe of Commons, that they ſhould go on to their Reply; and if ſuch Reply be made, your Lordſhip hath no further Opportunity to alledge any thing, or to prove any thing. This Notice is ordered by their Lordſhips to be given you. I am likewiſe to acquaint you, that it is their Lordſhips Opinion, as I before told you, that if you have any Queſtion of Law to be ſpoken to by your Council, their Lordſhips cannot admit any other Form, but that you ſhould propound it to their Lordſhips your ſelf.

Clerk from Lord *Winton*. I believe my Council, my Lords, have ſomething to ſay, in Anſwer to what the Managers have ſaid. My Lords, the Gentleman who was preſent, knows they would not let me know what they had to ſay.

Clerk. He ſays, I was by when his Council ſaid ſo.

Lord *High Steward*. My Lord, if your Lordſhip hath any Notes or Papers, you may help your Memory by them in your Defence:—Read, or look upon them.

Clerk from Lord *Winton*. I ſhall read it as I can; and you will excuſe it, if I don't do it right as I ſhould do.

Lord Winton *reads, and the Clerk repeats.*

The Council have a Point of Law, ariſing from what hath been paſs'd in the Houſe, to ſhew, that he is ſuch a Perſon as is not capable of

of committing the Treaſon laid in the Impeachment. I plead Not Guilty; and this alledges the ſame. I ſay, I am not Guilty; and the Paper ſays, it will demonſtrate I am not.

The Paper read again, and repeated as before.

The Council have a Point of Law, ariſing from what hath paſſed in the Houſe, to ſhew that he is ſuch a Perſon that is not capable of committing the Treaſon laid in the Impeachment.

Clerk from Lord *Winton.* I don't underſtand Law; and how ſhould I introduce a Point of Law?

Lord *High Steward.* My Lord *Winton*, if your Lordſhip doth not proceed to make a Defence, and to call your Witneſſes, I have already acquainted you, and I believe I ſhall be excuſed for doing it a ſecond Time, that I ſhall ſignify to the Managers of the Houſe of Commons to Reply, after which your Lordſhip can't have them examined.

Clerk from Lord *Winton.* I heard your Lordſhip what you ſaid; but I don't underſtand what is meant by it.

Lord *High Steward.* They may proceed to ſay what they think proper, touching that Sort of Defence your Lordſhip is making, to anſwer what they have already ſaid and proved againſt your Lordſhip; after they have ſaid and done this, the Lords will not allow you to ſpeak afterwards.

Clerk from Lord *Winton.* The Council deſire to be heard, ſince they have written a Paper, to be heard on that Paper.

Lord *High Steward.* The Paper is allowed to help your own Memory; but you muſt not give

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give in any Paper as written by your Council, nor mention it as ſuch.

Clerk from Lord *Winton.* I deſire my Council may be heard on the Point of Law contain'd in what I call the Paper. I deſire my Council may be heard to the Point of Law, which I read out of the Paper. I deſire my Council may be heard to the Point of Law, which they urge they have to ſay.

Lord *High Steward.* My Lord *Winton*, You have, by the Help of a Paper, propounded that which you call a Point of Law. Their Lordſhips have heard what you have propounded. I don't find any Motion is made to Adjourn, to conſider whether ſuch a Point is fit for your Council to be heard to; that is, whether it is a Point of Law. If there be any Doubt, you will preſently ſee it by the Effect, by ſuch a Motion as I have mentioned.

After ſome Pauſe,

Lord *High Steward.* If your Lordſhip doth not proceed, I muſt intimate to the Managers of the Houſe of Commons, that they may Reply.

Clerk from Lord *Winton.* My Lords, if your Lordſhips will allow my Council to be heard on the Point of Law I have given in.

Lord *High Steward.* My Lord, I think I may now preſume to tell you, that I humbly apprehend it is no Point of Law which you propoſe.

Clerk from Lord *Winton.* I am not a Judge of a Point of Law; for I don't underſtand Law, nor never did.

Lord *High Steward.* My Lord *Winton*, the ſame Matter muſt not be drawn over and over again. If your Lordſhip doth not proceed to ſome-

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ſomething proper for your Defence, I muſt ſignify immediately to the Managers, that they may Reply.

Clerk from Lord *Winton*. If your Lordſhips pleaſe to hear the Council, they will tell you what it means. The Council dare not ſpeak till they be deſir'd.

Lord *High Steward*. Gentlemen of the Houſe of Commons, you may Reply.

Mr. *Comper*. My Lords, I ſhall avoid, as near as I am able, repeating any thing I have already ſaid before your Lordſhips laſt Adjournment. I was obſerving that the Behaviour of the Priſoner, my Lord *Winton*, throughout all his Conduct, during the whole Progreſs of the Rebellion, appear'd in a quite different Light, to that in which he would now willingly appear: Your Lordſhips find him, according to the Evidence, at every falſe Alarm, very inquiſitive to know the Occaſion; having aſſumed the Command of a Squadron, his Lordſhip was inſtantly at his Poſt, ready to receive and encounter his Majeſty's Forces; and the Reverend Mr. *Patten* has done Juſtice to his Lordſhip's Vigilance and Courage upon this Occaſion; but it ſeems the Alarms were both falſe: Hence we may obſerve, that Alarms may be falſe, and *Dangers may be imaginary*; which Mr. *Patten*, and Men of his Principles, would do well to reflect on at Leiſure. My Lords, after great Numbers of Marches and Countermarches, during which his Majeſty's Subjects were plundered, the publick Money was ſeized, and Taxes exacted from the People by Force and Violence; your Lordſhips have heard, that the Town of *Preſton* was ſeiz'd by this Lord, and the Traytors, his Accomplices. At this Place enſued a terrible

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rible Slaughter of his Majesty's faithful Soldiers; Men, who deserved a better Fate, than to die by the Hands of such perfidious Rebels. But when the usual Bravery of the King's Troops prevailed, and there was nothing left but the undeserved Hope of Mercy, you find the Prisoner, amongst the rest, surrendring his Arms and his Person, to the Discretion of his Majesty's Generals. The Commons cannot, my Lords, but take a particular Satisfaction in one Incident, occasion'd by this Lord's putting himself upon his Trial; which is, that it has administred to them a Time and an Opportunity, in the most publick Manner, before this August Assembly, to vindicate his Majesty's Generals from a malicious Calumny, suggested even by this Lord the Prisoner, in his Answer to the Impeachment; and not only by him, but by the rest of his Accomplices already attainted. It seems not to be accidental, that all the Lords mentioned in the Impeachment, should every one of them (false as it appears to be) alledge, that they surrendred, some say upon Promises, but all agree, upon Hopes given of Mercy, considering how fully it now appears, that there is not the least Colour or Shadow of Truth to support this Suggestion; it is no uncharitable Reflection to say, that their Lordships, I doubt, to supply the Mischiefs their Arms could not accomplish, were willing to assist their Party, by furnishing them with an Untruth to propagate: With what Zeal and Industry has it been accordingly propagated! I may take the Liberty, I presume, to say, with the Consent of this whole Assembly, that it appears on the Evidence, to be utterly false; nay further, that the very Reverse is true; the

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Rebels would willingly have obtained a Promiſe, or even a Hope of being recommended; but the Generals tightly told them, Rebels deſerved no Mercy; nor would they treat with Rebels, of ſurrendring otherwiſe than at Diſcretion. I cannot conclude without touching ſhortly upon a Queſtion, which I obſerved his Lordſhip to ask, during the Courſe of the Evidence; I think it was propoſed to Colonel *Cotten*, Whether any of *our Men*, as his Lordſhip was pleaſed to expreſs it, were ſlain during the Time of the Ceſſation of Arms at *Preſton?* Which, in Fact, it ſeems, was true; and if it had been anſwer'd in the Affirmative, without Explanation, I believe his Lordſhip would have been gratified, by furniſhing his Friends with another Story to propagate, which, well improved, might have laſted a good while; but when the Witneſs (who, I preſume, diſcerned the Tendency and Malignancy of the Queſtion) gave his Anſwer, the Caſe appears this: The Rebels ſtipulate and agree, (Hoſtages being delivered) that no Works ſhall be erected in the Town during the Suſpenſion; that no Perſon then in the Town, ſhall go out of it during the ſame Time; in Breach of which Stipulation and Agreement, about ſix of the Rebels attempt, Sword in Hand, to charge through the King's Troops; in which Attempt they fell; and if the King's Troops had done leſs, they had not done their Duty. My Lords, I thought it not improper to make ſome few Obſervations upon the Evidence; not that his Lordſhip's Defence has made it requiſite, but to anſwer, according to my Power, the End of that Truſt, which the Commons have been pleaſed to repoſe in me.

Sir

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Sir *William Thomſon*. My Lords, I ſhould think my ſelf unworthy the Honour of being allowed any Share of your Lordſhips Time; but as I was entruſted by the Commons to aſſiſt the Learned Gentleman who ſpoke laſt, in a Reply to ſuch Defence as ſhould be made by the Noble Lord at the Bar, although no Evidence has been produced by him; yet I muſt requeſt your Lordſhips Patience, to make a few Remarks on the Nature of this Cauſe, as it ſtands before your Lordſhips.

The Anſwer of the Noble Lord not being ſupported by Evidence, ought to go for nothing; but ſince ſeveral Matters are alledg'd in it to mitigate, if not to juſtify his Proceedings, which are falſify'd by our Evidence, I beg leave to take ſome Notice of it.

I muſt agree with the Noble Lord, that 'It 'will be very pleaſing to that Honourable Aſ'ſembly, who are his Accuſers, to have an in'nocent Man acquitted, as well as a guilty one 'condemned. Nor can I differ with him where he aſſerts, 'That to be taken with Perſons in 'Arms againſt the Government, is a reaſonable 'Preſumption of his Guilt, and a very juſt 'Foundation to accuſe him with the reſt ſo 'taken; but that the Circumſtances of his Caſe 'appear ſo different from the others, as to 'require your Lordſhips diſtinguiſhing him in 'Judgment. I cannot ſay, that any thing has been offer'd to your Lordſhips, which makes Room for ſuch a Diſtinction.

The Noble Lord is pleaſed to give an Account of what happened to him about Eight Months ago, when he endeavoured to avoid the Suſpicion of the Government; he mentions the ill Uſage of the Militia, and the King's Troops, and

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and ſeveral Tranſactions, *viz.* 'Rifling his Houſe, 'and committing Diſorders there, without telling when they happened, or from whom: He is pleas'd to ſay, 'That he was unfortunately 'driven into the Company of ſome of the Perſons mentioned in the Impeachment; that he 'joined them without any Intention to aſſiſt 'their Deſigns; that he never meant to leave 'his own Country; that he was ignorant of the 'Purpoſes of his Companions; that he was 'conſtrain'd to keep them Company; but ne-'ver join'd in any Act of Hoſtility, or counte-'nanced or abetted them therein.

My Lords, the Evidence againſt this Noble Lord, ſufficiently explains how far he abetted the Undertakings of his Companions.

It was prov'd to your Lordſhips, that when he firſt came to join the Rebels at *Moffett*, he brought Fourteen of his Domeſticks with him, moſt of them well armed and accoutred; that he came with them to a Place of Rendezvous, where were aſſembled the Lord *Kenmure*, and about One Hundred and Fifty Horſe; that from the Time he joined them till, he was taken, he marched along with them in an hoſtile Manner through all the Towns, at the Head of his Troop that he had form'd, and which he commanded upon all Occaſions; that he had alſo a Squadron under his Command and Direction, to whom he gave Orders, and was very ready to have diſpoſed them to Action, particularly on two Alarms of the Approach of the King's Troops; that he aſſiſted ſeveral Times at the proclaiming the Pretender by the Rebels in the Towns where they paſſed thro', with his Sword in Hand; that he was with them at thoſe Towns, where they ſeized the pub-

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publick Money, the Cannon, and other warlike Instruments; and when he came to *Preston*, that in the Preparations to resist the King's Troops, he was as active as any of the rest; and particularly in the Church-Yard, where the Rebels were drawn together; in order to that Resistance, he had his Sword and Pistols with him, and was assisting in making the Dispositions for Engagement.

And for the Constraint that is pretended, 'tis plain, that as he came in to the Rebels in the Manner I have mentioned, without any Force or Compulsion whatever; so he continued all along with them, and gave them the best Assistance he could, and was far from shewing any Backwardness or Uneasiness at their Proceedings, through the whole Progress of this Affair. He drank the Pretender's Health, and the other usual Health among the Rebels, *viz.* Success to their Cause; and if he had not wished it, he might have left them whenever he would; if he had an Inclination so to do, he did not want an Opportunity, particularly at *Langholm*, when about Five Hundred *Highlanders* went back to *Scotland*; before they went, they suffer'd him to come to them; (tho' they would not any other) that he discoursed them, and came back from them, and declar'd, it was not his Fault that they would not go along with him into *England*. My Lords, whether the whole Tenor of this Proceeding does not manifest the Intentions of this Noble Lord; and whether the Evidence of these Facts, does not falsify every Allegation in his Answer, by which he would justify himself, your Lordships will easily determine.

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The Noble Lord says further in his Answer, 'That if he hath committed any Act, which, 'by the Rigour of the Law, may be construed 'High Treason, he hopes the Innocence of his 'Heart, and his Ignorance of the Law, will, 'by your Lordships Intercession, render him an 'Object of his Majesty's Mercy; which, he says, 'he at the Time of his Surrender was 'encouraged to depend upon by his Majesty's 'Officers.

As to any Assurances or Encouragement to expect Mercy upon the Surrender, the direct contrary is fully made out, I dare say, to your Lordships entire Satisfaction. And for your Lordships Intercession, that is not the Consideration now before you: The Question is only, whether the Witnesses have proved him guilty of the High Treason of which he is accused?

I find the Noble Lord cannot condescend to own the Facts he is charged with, to amount to this Crime: He is pleased to say, 'That he is 'descended from a Noble Family, in whose 'Blood the Streams of Loyalty were always 'pure, never corrupted or polluted with 'Treason or Sedition; that he never degene-'rated from his loyal Ancestors, so as to form 'or carry on any Design to subvert or alter the 'Constitution of this Kingdom; but that he 'was always ready to sacrifice his Fortune, and 'even his Life, for its Preservation.

My Lords, I could wish, for the Sake of this unhappy Lord, the Object of your present Consideration, that it were not too evident, what Constitution he meant to preserve, and for which he has ventur'd his Life and Fortune.

All Mankind, who will not shut their Eyes, must see, that the Purpose of this Noble Lord,

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and his Accomplices, was to dethrone his moſt Sacred Majeſty, our Proteſtant King, whom God and the Laws have ſet over us; and in his ſtead, to ſet up a Popiſh Pretender to his Crown, bred up in Superſtition, and under the Maxims of Tyranny and Arbitrary Power: The Succeſs of this Deſign, muſt neceſſarily have produced a moſt dreadful Scene of Blood and Confuſion; the Life of our moſt gracious Sovereign, the Lives of all his Royal Family, your Lordſhips, and thoſe other brave and honeſt *Britons*, who would have ſtood in the Defence of the Religion, the Laws and Liberties of their Country, muſt have been ſacrificed to the Rage and Fury of Popiſh Bigottry, and to the inſatiable Cruelty of Jeſuits and Prieſts, who, as we are Proteſtants, are our moſt implacable Enemies.

Inſtead of the Happineſs we now enjoy, under our moſt excellent Form of Government, where every thing that is dear and valuable to humane Nature, is protected by the Laws from the leaſt Violence or Invaſion whatever; what could this Nation expect from Popery and Arbitrary Power, but endleſs Miſeries and Calamities, and the moſt abject Slavery?

My Lords, it is a melancholy Reflection, that there ſhould be any, who pretend to the Name of *Britons*, who would engage in ſo groundleſs, ſo unprovoked, and, moſt properly called, ſo unnatural a Rebellion; or that others ſhould be ſo deluded or corrupted, as, by their falſe and malicious Inſinuations, and by their vile Calumnies on the beſt of Princes, or by their avowed Indifference towards him, to encourage that traiterous Enterprize.

All

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All such Enemies to the Welfare and Prosperity of their Country, ought to reflect, with the utmost Shame and Confusion, on the dismal Prospect they were preparing for us, by the natural Tendency of their Proceedings: And I cannot but think, that it must add to the Affliction of this unfortunate Lord, who stands before this August Judicature, while he reflects on the Assurances given him of generous Compassion, as far as is consistent with the Rules of Justice; while he considers of that Humanity and tender Regard express'd towards him, by that great and noble Mind, who so justly represented all your Lordships Sentimeuts; while he observes that Care and Concern shewn to him, that Assistance granted him towards making his Defence, and that his Judges are so many Noble Peers, who can never be influenced to condemn the Innocent, and who will be governed only by full Proof, and clear Conviction: Sure he must now reproach himself, when he thinks that he was about to subvert those very Laws, by which even his Life, who has so transgressed, is thus protected.

My Lords, I am here led to take Notice also, that his most gracious Majesty (against whom this unfortunate Lord, with his Associates, have so signally offended) hath been pleased to express his mild and gentle Disposition, even to them his most inveterate Enemies. *It was an Uneasiness to him, that he could not distinguish the first Years of his Reign, by the endearing Marks of Peace and Clemency; it afflicted him, that the Calamities of his faithful Subjects should require indispensable Returns of Severity.*

I may presume, your Lordships natural Compassion would encline you to the same merciful

Diſpoſition; but the Commons are perſwaded, that your Lordſhips will have ſome Regard to the Lives of thoſe many brave and gallant Men, who, by the baſe Methods of the Rebels, were murdered, and expir'd in their Country's Cauſe; that their Blood demands the Juſtice of that Country, in whoſe Defence it was ſpilt; and the Commons are aſſured, that your Lordſhips muſt think, that the publick Safety alſo requires your exemplary Juſtice, more eſpecially on the principal Offenders; and that 'tis the moſt effectual Method to prevent any future Inſurrections or Diſturbance of the publick Repoſe and Tranquillity of the Kingdom, and to tender firm and laſting our preſent happy Eſtabliſhment.

Sir *J. Jekyll.* My Lords, the Gentlemen of the Houſe of Commons have nothing more to offer to your Lordſhips, but deſire your Lordſhips Opinion on the Evidence.

Then the Houſe of Lords was Adjourned to the Chamber of Parliament; and being returned, the Houſe was Reſumed, and Proclamation made for Silence as uſual.

Then the Lord *High Steward* being ſeated on the Chair, placed as beforementioned, ſtood up uncovered, and beginning with the youngeſt Peer, ſaid,

Thomas Lord *Parker*, what ſays your Lordſhip, Is *George* Earl of *Winton* Guilty of the High Treaſon whereof he ſtands Impeached, or not Guilty?

Then *Thomas* Lord *Parker* ſtanding up in his Place, and laying his Right Hand on his Breaſt, ſaid, Guilty upon my Honour.

In like Manner anſwer'd all the Lords then preſent.

After

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After Proclamation for Silence, the Priſoner was brought forth; and the Lord *High Steward* ſaid as followeth:

George Earl of *Winton*, the Lords have conſidered of the Charge, and the Evidence given againſt you; and likewiſe of what you have ſaid in your Defence, and of the whole Matter, as it hath been before them in this Trial; and are of Opinion, that your Lordſhip is Guilty, and have found your Lordſhip Guilty of the High Treaſon whereof you ſtand impeached.

And then the Houſe Adjourn'd to the Parliament Chamber.

Monday, March 19. *The Third Day.*

ON *Monday*, the 19th of *March*, the Earl of *Winton* was again brought to the Bar.

Lord *High Steward*. *George* Earl of *Winton*, when you was laſt at this Bar, I let your Lordſhip know, that your Peers had found you Guilty of the High Treaſon whereof you ſtand impeached; that is, in the Terms of Law, Convicted you of High Treaſon. I am now to aſk your Lordſhip, if you have any thing to offer, why Judgment of Death ſhould not paſs upon you according to the Law?

Clerk from Lord *Winton*. My Lord *Winton* ſaith, his Council have a Point of Law to offer to your Lordſhips, to ſhew that he is ſuch a Perſon, againſt whom, by Law, Judgment ought not to be given.

Lord *High Steward*. My Lord, will your Lordſhip ſtate the Point upon which your Lordſhip is adviſed, that you are not ſuch a Perſon againſt whom Judgment ought to be given?

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Clerk from Lord *Winton.* I don't know what your Lordſhip means.

Sir *C. Phipps.* If your Lordſhips pleaſe, we have a Point of Law humbly to offer to your Lordſhips, if ———

Att. Gen. My Lords, I hear a Gentleman of the long Robe offering to ſpeak. I do humbly inſiſt on it, that they are not to ſpeak, unleſs there be a Point of Law ſtated by the Priſoner, and which your Lordſhips ſhall think to be a Point of Law; we think it irregular.

Mr. *Comper.* We apprehend the Objection to that Gentleman's being heard, is ſo obvious, that we are ſurprized to find he ſhould preſume to ſpeak, without your Lordſhips Direction ſo to do; he cannot but know, that the Priſoner is to propound the Queſtion in Law; and if your Lordſhips ſhall conceive it to be a Point of Law, proper to be argued by Council, your Lordſhips will direct him to ſpeak; but he ought not in any Caſe to propound a Queſtion in Law, nor when a Queſtion is propounded by the Priſoner, to ſpeak to it without your Lordſhips expreſs Direction.

Lord *High Steward.* Sir *Conſtantine Phipps,* you know the Practice to be ſo, and the Point muſt be firſt ſtated by the Priſoner, before you can ſpeak to it.

Sir *C. Phipps.* My Lords, if I had been heard but ten Words more ———

Sir *W. Thomſon.* My Lords, we humbly inſiſt upon it, that that Gentleman be not heard one Word more.

Then upon a Motion, the Houſe adjourn'd to the Painted Chamber, and after about Half an Hour, returned again.

Lord

Lord *High Steward*. My Lord *Winton*, the Lords have conſider'd of the Matter which you have moved in Arreſt of Judgment; which was to this Effect, that you are not ſuch a Perſon, as againſt whom Judgment of Death for High Treaſon ought to be pronounced. I am directed to acquaint you, that their Lordſhips are of Opinion, it is Matter of Fact, and not of Law; and that the Lords think you are ſuch a Perſon, againſt whom Judgment ought to be given in this Caſe. I am likewiſe ordered by the Lords, to reprimand you, Sir *Conſtantine Phipps*, for having, in a Proceeding of this Nature, preſumed to be ſo forward as to ſpeak for the Priſoner at the Bar, before a Point of Law was firſt ſtated, and you had leave to ſpeak to it; and your Fault is certainly the greater, for having preſumed to do this to a Matter, which you cannot but know is Matter of Fact; and that the Law is not doubtful one Way or other, the Fact being ſuppoſed. My Lord *Winton*, I am allowed again to ask your Lordſhip, if you have any thing further to alledge, or move, why Judgment of Death ſhould not paſs upon you according to the Law.

Clerk from Lord *Winton*. My Council are ready to offer, in Arreſt of Judgment, that the Impeachment is inſufficient; for the Time of committing the Treaſon is not therein laid with ſufficient Certainty.

Lord *High Steward*. I think the Matter moved by my Lord is, that his Council ſhould be admitted to ſhew, that the Impeachment is inſufficient, in reſpect that the Time therein is not laid with ſufficient Certainty. This, I think, is the Matter moved: Will your Lord-

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ſhips be pleaſed, that the Council have leave to ſpeak?

Lord *High Steward.* Is it your Lordſhips Pleaſure, that the Council for the Priſoner may be allowed to ſpeak to this Point?

Lords. Ay, Ay.

Lord *High Steward.* I ask your Lordſhips leave to go nearer to the Table.

Which being done,

Proclamation for Silence was made as uſual.

Lord *High Steward.* Gentlemen that are of Council for the Priſoner at the Bar, you have Liberty to ſpeak to the Point propoſed.

Sir *Conſtantine Phipps.* MAY it pleaſe your Lordſhips, We that have the Honour to be aſſigned by your Lordſhips, as Council in this Caſe, do humbly apprehend the Impeachment againſt the Noble Lord at the Bar, to be inſufficient; it is ſo uncertain, that we (with the greateſt Submiſſion) take it, no Judgment can be given upon it. My Lords, we beg leave to take Notice to your Lordſhips, that in Indictments in the Courts below, even for Treſpaſſes, the Law requires the certain Day when the Offence is ſuppoſed to be committed to be alledged; and if a particular Day be not laid, the Indictment is inſufficient. And if ſuch Certainty is requiſite in Offences of the moſt minute Nature, it is much more ſo in capital Crimes, and more ſtill in Offences of the higheſt Nature, ſuch as Treaſon, with which this Noble Lord is charged.

My Lords, there be two Reaſons why, in Indictments for High Treaſon, a certain Day ſhould be aſſigned when the Treaſon was committed.

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One is, for the Advantage of the Priſoner, that being apprized not only of the Facts with which he is charged, but alſo of the Time when thoſe Facts are ſuppoſed to be committed, he may be the better able to make his Defence: 'Tis poſſible he may have Witneſſes to prove he was at another Place, and in other Company, at the Time when he is accuſed to have committed the Treaſon, or may by other Circumſtances make his Innocence appear.

The ſecond Reaſon is, for the Benefit of the Crown, that it may be known to what Time the Forfeiture ſhall relate; for in Treaſon, the Forfeiture relates to the Time laid in the Indictment; and if there be no preciſe Time alledged in the Indictment, the Forfeiture can relate no further than to the Judgment.

My Lords, the Forfeitures in Caſes of Treaſon are very great; therefore we conceive, with humble Submiſſion, that the Accuſation ought to contain all the Certainty it is capable of, that the Priſoner may not, by general Allegations, be rendered uncapable to defend himſelf, in a Caſe which may prove ſo fatal to him.

Our Books, my Lords, furniſh us with many Inſtances, where Indictments have been held to be inſufficient for leſs Faults, than not ſpecifying the Day when the Offence was committed; but in Caſes ſo plain, I will not trouble your Lordſhips with citing Authorities; for I believe there is not one Gentleman of the long Robe but will agree, an Indictment for any capital Offence to be erroneous, if the Offence be not alledged to be committed upon a certain Day.

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My Lords, an Attainder upon an Impeachment, ſubjects the Offender to the ſame Puniſhment, the ſame Forfeitures, as an Attainder upon an Indictment; and therefore I am at a Loſs to find out a Reaſon, why there ſhould not be the ſame Certainty in the one, as in the other; if equal Certainty be required in both, then we humbly ſubmit to your Lordſhips Judgment, whether this Impeachment be not erroneous and inſufficient, in that there is no particular certain Time alledged, when the Treaſon or the Overt-Acts were committed. The Treaſon alledged is, conſpiring and imagining the Death of the King; and the Impeachment ſets forth, 'That the Conſpirators, (and names them) as falſe Traytors to his 'preſent moſt Sacred Majeſty King *George*, 'the only lawful and undoubted Sovereign of 'theſe Kingdoms, having withdrawn their Al-'legiance, and cordial Love, and true and due 'Obedience, which they, as good and faithful 'Subjects, owed to his ſaid Majeſty, did, in or 'about the Months of *September*, *October*, or '*November* 1715. moſt wickedly, maliciouſly, 'falſly, and traiterouſly imagine and compaſs 'the Death of his moſt ſacred Majeſty. My Lords, a Proſecution by Impeachment, is a Proceeding at the Common Law, for *Lex Parliamentaria* is a Part of the Common Law; and we humbly ſubmit it to your Lordſhips Conſideration, whether there is not the ſame Certainty required in one Method of Proceeding at the Common Law, as in another.

Your Lordſhips obſerve with what Uncertainty, as to the Time, the Treaſon is alledged. 'Tis ſaid to be in, or about the Months of *September*, *October*, or *November* 1715. Who is

able

able to say, to which of these Months, much less, to what Day of either of these Months, the Forfeiture shall relate? And how is it possible for the Noble Lord, the Prisoner at the Bar, to make a Defence to a Charge so general, unless he bring for Witnesses all those Persons, with whom he has had any Conversation during those three Months at least?

My Lords, the Overt-Acts are alledged with the same Insufficiency and Uncertainty, as the Treason it self is; for in charging the first Overt-Act, which is conspiring to levy War, and to depose the King, it is said, 'That for 'accomplishing and executing their said traiterous Purposes, they, the said *James* Earl 'of *Derwentwater*, &c. did, in or about 'the said Months, or some of them, and 'at divers other Times, and at divers other Places within this Kingdom, wickedly 'and traiterously agree, confederate, *&c.* to 'raise, excite, and levy, within the Counties 'of *Teviotdale*, *Northumberland*, *Cumberland*, 'and the County-Palatine of *Chester*, and elsewhere within this Kingdom, a most cruel, 'bloody, and destructive War, against his Majesty, in order to depose and murther his 'sacred Majesty, and to deprive him of his 'Royal State, Crown, and Dignity. My Lords, can any thing be more uncertainly alledged, than to say, that the Conspirators did, in or about the said Months, or some of them, and at divers other Times, and at divers other Places within this Kingdom, confederate, *&c.* to levy War within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and County-Palatine of *Chester*, and elsewhere within this Kingdom?

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The next Overt-Act, which is actual levying War, is not laid with greater Certainty; for the Impeachment sets forth, 'That the 'said Earl of *Derwentwater*, &c. their Accomplices and Confederates, *in or about the Months* 'aforesaid, in the Counties aforesaid, *or some of* 'them, did gather together great Numbers of 'his Majesty's Subjects, and with them did assemble in a warlike and traiterous Manner, 'in order to raise Tumults and Rebellion within this Kingdom; and having procured great 'Quantities of Arms, Ammunition, and warlike Instruments, *at the Times and Places a-* 'foresaid, *or some of them*, did form and compose, or did assist in forming and composing 'an Army of Men, consisting of his Majesty's 'liege Subjects, in order to wage War against 'his said Majesty, for, and in Behalf, and in 'Favour of the said Pretender to the Crown 'of these Realms; and at the Time and Times 'and Places aforesaid, *and at divers other Times* 'and *Places* within this Kingdom, the said 'Conspirators did levy and raise War and Rebellion against his most Sacred Majesty, *&c.*

The next Overt-Act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment sets forth, 'That the aforesaid Conspirators, *during their* 'March and Invasion aforesaid, in open Defiance of his most Sacred Majesty's just and 'undoubted Title to the Imperial Crown of 'these Realms, did wickedly and traiterously 'cause and procure the said Pretender to be 'proclaimed in the most publick and solemn 'Manner, as King of these Realms.

Here is no certain Time or Place alledged, when or where the Pretender was proclaim'd, but

but only that it was during their March and Invaſion.

The laſt Overt-Act ſeems to be laid with greater Certainty than the reſt; for 'tis ſaid, 'That the Conſpirators did, on or about the 'ninth, 10th, 11th, 12th, or 13th of *November* 'aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton*, in the County 'Palatine of *Lancaſter*, againſt his Majeſty, and 'did then, and there, in a warlike and hoſtile 'Manner, levy War, oppoſe, engage, and fight 'againſt his Majeſty's Forces; and did then, 'and there cauſe and procure a miſerable and 'horrid Slaughter and Murther of many of his 'Majeſty's faithful Subjects. Here indeed are particular Days mentioned, but then the Words *or about*, leave it at large; for no Man can tell how many Days may be included in theſe Words *or about*. We humbly apprehend, that a Charge of this high Nature, ought not to be alledged with ſuch Uncertainty; and that the Impeachment is as erroneous as an Indictment drawn in this Manner would be; this being a Proceeding of the ſame Nature, and according to the Courſe of the Common Law.

My Lords, I do not pretend any great Skill in Parliamentary Proceedings; but preſume to ſay, that in my little Experience in Buſineſs in other Courts, I never ſaw a Charge exhibited againſt any one, that was laid in ſo uncertain a Manner; unleſs in Libels in the Eccleſiaſtical, or Admiralty Courts, which cannot in the leaſt influence the Caſe now before your Lordſhips; this (as I have obſerved) being a Proceeding according to the Courſe of the Common Law.

Upon the whole Matter, I humbly ſubmit to your Lordſhips Judgment, whether, for the Rea-

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Reaſons I have offer'd to your Lordſhips Conſideration, the Impeachment is not erroneous; and whether your Lordſhips will think fit to proceed to Judgment againſt the Noble Lord, the Priſoner at the Bar, upon an Impeachment ſo uncertain and inſufficient, as I humbly apprehend this to be.

Mr. *Williams*. MY Lords, I am alſo Aſſign'd by your Lordſhips, of Council for this unfortunate Lord; and humbly inſiſt in Arreſt of Judgment, that there is a Defect in this Impeachment, in regard no certain Day is laid, when the Treaſon is charged to have been committed.

In the Impeachment 'tis ſaid, that this Noble Lord did, *in or about* the Months of *September*, *October*, or *November* 1715. together with the others in the Impeachment nam'd, traiterouſly compaſs the Death of his moſt Sacred Majeſty; that this Noble Lord did, *in or about* the ſaid Months, *or ſome of them*, together with the reſt, agree and confederate to levy War againſt his Majeſty; that *in or about* the ſaid Months, *or ſome of them*, this Noble Lord, with others, did levy War, and did march through ſeveral Parts of the Kingdoms, and did proclaim the Pretender to be King; and that *on or about* the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of the ſaid *November*, the Noble Lord, with others, did ſeize and poſſeſs themſelves of the Town of *Preſton*, and fought againſt his Majeſty's Forces.

This is the Effect of the Impeachment.

And with great Submiſſion I take it, that, in Point of Law, the Impeachment is defective, in reſpect of the Uncertainty of the Time when this Treaſon is laid to have been committed.

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I humbly apprehend, that the Honourable the House of Commons, is the *grand Inquest of the whole Nation*; and that their Impeachment is in Nature of an Indictment, found by that Grand Inquest; differing from an Indictment in this Respect, that an Indictment is found by the Inquest of a *County only*; but an Impeachment by the *Grand Inquest of the whole Kingdom.*

And taking it, that Impeachments are properly to be resembled to Indictments,

Then as the omitting of the laying of a certain Day when the Treason was committed, would be a material Fault in the Case of an Indictment; so, with great Submission, it is as material a Defect in the Case of an Impeachment.

It seems plain, that in the Case of an Indictment, a certain Day ought to be laid when the Treason was committed.

It will, I believe, hardly be denied, but that in Case of an Indictment for Treason, it would be ill if it were laid, that the Party indicted committed the Treason *on or about* the first of *September*, 1715.

It would be apparently worse, if 'twere laid in an Indictment, that the Party committed the Treason *in or about the Month of September*, 1715.

It would be still worse, (because more uncertain) if it were laid in an Indictment, that the Party committed the Treason *in or about* the Months of *September*, *October*, or *November*, 1715.

And, with great Submission, this, as I humbly take it, is the very Case before your Lordships; I mean, taking it that Impeachments and Indictments, as to the material Parts of them, are

are to be measur'd by the same Rules of Law, as I humbly conceive they ought to be.

That the certain Day for the committing the Treason, ought to be laid in Case of Indictments for Treason, seems to be proved, not only from the constant Practice of laying a Day certain in all Indictments of Treason; but from the Reason of the Law, which shews it to be a *substantial and material* Part of the Indictment.

That the constant Practice, in Case of Indictments for Treason, is to lay the Day on which the Treason is supposed to be done, will, as I presume, be admitted.

And such constant Practice is, of it self, a strong Argument, that the Law requires it.

But I humbly take it, that the Reason of the thing argues still much stronger for me, and shews it to be an *essential* Part of the Indictment.

The Reason of mentioning a Day certain in the Indictment, when the Treason is supposed to have been committed, is, in some respects, even for the Benefit of the Crown it self, and, in some respects, for the Advantage of the Party indicted.

It concerns the Crown, in respect of the Forfeitures accruing to the King, of the Lands of the Party indicted; for where an Attainder ensues upon an Indictment for Treason, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment, when the Treason is charged to have been committed.

This is expressly said in the Lord *Cokes* 1 *Inst.* 13. *a. b.* 390. *b.* and the Difference there taken is, between a Writ of Appeal and an Indictment.

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ment. 'Tis there said, that if a Man be indicted for a capital Offence, and outlaw'd upon it, the Land of the Party is forfeited from the Day laid in the Indictment for the committing of the Treason, or other capital Crimes; but in Case of an Outlawry upon a *Writ of Appeal*, because no Day is mentioned in the Writ, the Forfeiture is only from the Judgment.

And though in the Case of a Writ of Appeal, which is call'd in Latin (*Breve*), from its Brevity, no Day is mentioned; yet in the Declaration upon the Appeal, (which resembles an Indictment) 'tis necessary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Case of *Wilson* against *Law*, which was adjudg'd in the Court of *King's Bench*, in the Sixth Year of King *William* and Queen *Mary*, in an Appeal of Murder, an Exception was taken to the Appeal, that it was too uncertain, in regard the Murder was laid to be done, *circa horam primam post meridiem*; and this Uncertainty, even of the Hour, was much insisted upon: But this, 'tis true, was at length over-rul'd, and held, that *circa horam primam*, or *inter horam primam & secundam*, was well enough.

However, no one, as I humbly apprehend, ever doubted, but that laying of a certain *Day* when the Fact was committed, is necessary, both in the Case of an Indictment, and in a Declaration upon an Appeal; and that as to the Land of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But if the Question was ask'd in the present Case, from what Day the real Estate of this

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unhappy Lord ſhould be forfeited, it would, as I humbly apprehend, be difficult to anſwer it.

And that Difficulty ariſes from the Uncertainty of the Impeachment, as to the Time when the Fact was committed.

If then the laying in an Indictment the certain Day when the Treaſon was committed, concerns the Benefit of the Crown, as it ſurely does;

If it entitles the King to the Forfeiture of the Lands, from the Day laid in the Indictment, as from the Authorities I have mentioned, it appears to do;

If this Matter concerns that great Prerogative and Flower of the Crown, and its Right to Forfeitures;

Then ſurely this Omiſſion can by no Means be call'd a ſlight Omiſſion, or a Fault in Form only.

It will alſo have its Weight with your Lordſhips, that the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewiſe for the Benefit of the Party indicted. 'Tis for his Advantage to know the Time when he is charg'd to have committed the Offence, and by that he will be the better enabled to defend himſelf againſt the Accuſation.

It is a known Rule in Law, that in all Caſes of Indictments, (though for Miſdemeanours only) they ought to be ſtrictly certain.

This Rule holds *a fortiori*, in Caſes of Indictments for capital Offences;

And ſtill, *a fortiori*, in Caſes of Indictments for High Treaſon, where, for Example ſake, the Judgment, though juſt, is as terrible as can well be thought of.

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My Lords, I am ſenſible I ought to have too great a Value for your Lordſhips Time, to cite any of thoſe numerous Caſes in the Law-Books, which juſtify that known Rule in the Law, that requires Certainty in Caſes of Indictments.

I ſhall only beg leave to mention to your Lordſhips one Caſe, which is an Authority of your Lordſhips, upon a Writ of Error before your Lordſhips; which ſhews how ſtrict the Law is in the penning of Indictments for Treaſon, and that it requires that even what ſeems to be Matter of Form only in ſuch Indictments, muſt be complied with. It is the Caſe of the King againſt *Tucker*, which was in the ſixth Year of King *William* and Queen *Mary*, and is reported in Serjeant *Levinz*, 3 *Rep.* 396. where *Tucker* was indicted for Treaſon; and in the Concluſion of the Indictment it was not ſaid to be *contra allegiantia ſua debitum*; and upon this Indictment *Tucker* was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was revers'd in a Writ of Error in the King's Bench, upon very great Debate, for want of thoſe Words in the Indictment, *contra allegiantia ſua debitum*; and upon a Writ of Error before your Lordſhips, the Judgment of Reverſal was affirmed; by which Means a Purchaſer under the Attainder loſt the Eſtate.

With Submiſſion, this Caſe is much ſtronger than the principal Caſe now before your Lordſhips.

In that Caſe it might, with ſeeming Reaſon, be objected, that the Word (*Proditorie*), which is always in the Body of every Indictment, ſhews, and neceſſarily implies, that the Treaſon

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committed, was againſt the Party's Allegiance; for elſe how could it be *Proditorie?*

Alſo in that Caſe, the Treaſon is ſet forth at large in the Indictment, together with the Overt-Act, which *demonſtrates*, that the doing this muſt be againſt the Party's Allegiance.

But all this would not maintain the Indictment, in regard Indictments for Treaſon were always laid to be againſt the Party's Allegiance.

And if the conſtant Forms of Indictments be an Argument,

'Tis as ſtrong a one for us in the preſent Caſe; for I believe there never was an Indictment, without mentioning the Day when the Fact was committed.

Neither, with Submiſſion, is this Matter of Form only, but 'tis the ſubſtanaial Part of the Indictment; in regard in this Point the King is intereſted in reſpect of the Forfeiture; and the Party, in reſpect of his Defence.

It will (I humbly preſume) hardly be expected from us, that we ſhould cite Precedents of Impeachments, eſpecially if it were known, what few Hours Notice we have had of attending your Lordſhips in Arreſt of Judgment.

However, I will beg leave to mention one Caſe of an Impeachment, freſh in your Lordſhips Memory, Dr. *Sacheverell*'s Caſe.

Dr. *Sacheverell* was impeached before your Lordſhips by the Honourable Houſe of Commons, for ſeditious Expreſſions in Two Sermons, the one preach'd at *Derby* Aſſizes, and the other at St. *Paul*'s, *London*; and in that Impeachment, the preciſe Days are laid when the

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the Doctor preached each of these two Sermons.

And I humbly take it, that, by the like Reason, a certain Day ought to be laid in the Impeachment, when this Treason was committed; and that the Authority of Dr. *Sacheverell*'s Case seems so much stronger than the present Case in Question, as the Crime of Treason is higher than that of a Misdemeanour.

My Lords, I have nothing else to say on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not *insane* enough to be within the Protection of the Law, nor at the same time *sane* enough to do himself, in any respect, the least Service whatever.

Here the Managers gave some Interruption to the Council.

Lord *High Steward*. Mr. *Williams*, I apprehend the Reason why the Managers of the House of Commons appear uneasy with you is, that you are going into a Matter of Fact, and which you have not leave to speak to; you must therefore confine your self to the Point of Law that was stated.

Mr. *Williams*. My Lords, I shall take up no more of your Lordships Time; but humbly hope, that the Cases of Indictments are parallel with those of Impeachments.

That, as in an Indictment for Treason, the Want of laying a Day when the Treason is charg'd to have been committed, is a manifest Error;

That as the constant Forms of Indictments are so;

That as the Reason of the Law requires they should be so;

So for Want of this Certainty in this Impeachment, we, with great Submiſſion, inſiſt that the Impeachment is defective:

And therefore pray, that the Judgment againſt this unfortunate Lord may be arreſted.

Mr. *Walpole*. MY Lords, the Commons have attended to the Objection made by the Council on the Part and Behalf of the Noble Lord at the Bar, and they humbly conceive, thoſe Learned Gentlemen ſeem to forget in what Court they are. They have taken up ſo much of your Lordſhips Time, in quoting of Authorities, and uſing Arguments, to ſhew your Lordſhips what would quaſh an Indictment in the Courts below, that they ſeem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of *Great Britain*. For ſhould the Commons admit all that they have offered, it will not follow, that the Impeachment of the Commons is inſufficient; and I muſt obſerve to your Lordſhips, that neither of the learned Gentlemen have offered to produce one Inſtance relating to an Impeachment; I mean, to ſhew that ever the Sufficiency of an Impeachment was called in Queſtion from the Generality of the Charge, or that any Inſtance of that Nature was offered at before. The Commons don't conceive, that if this Exception would quaſh an Indictment, it would therefore make this Impeachment inſufficient; nor do they think it neceſſary, in Juſtice to the Noble Lord at the Bar, that a certain Day ſhould be mentioned in the Impeachment: They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardſhip for want of

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of fixing a certain Day, on which the Treaſon was committed. What he is charged with, is being concerned in a moſt notorious Rebellion. The Time mentioned in the Impeachment is, the Months of *September*, *October*, and *November*; and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of *November*. He is charged with being concerned from the Time that he left his own Houſe, to the Time he was taken at *Preſton*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been. And how can this noble Lord ſuffer, becauſe no particular Day is mentioned, after he continued in the Rebellion for ſo many Days and Months, and marched through ſo many Counties? It is impoſſible to conceive he can ſuffer from any Uncertainty in the Charge, in not having a particular Day fixed. But, my Lords, the Commons think themſelves ſufficiently juſtified, and their Impeachment ſupported, by a Precedent I have in my Hand, the Trial of my Lord *Stafford*, who was try'd for High Treaſon, and was executed for the ſame. And I obſerve that he had Council, and it appears he offer'd ſome Things in Arreſt of Judgment; and although it will appear, that the Time was more uncertain in that Impeachment, yet that was never attempted to be offer'd in Arreſt of Judgment. In his Caſe, the Words of the Articles of Impeachment are, *That for divers Years laſt paſt, a damnable Contrivance and Conſpiracy had been form'd and carried on*; that is juſt as theſe Articles are: And when they come to the particular Charge, all that is ſaid is, *That within the Time aforeſaid*, &c. that is, ſome Time within divers Years laſt paſt: But

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this Impeachment is so far from being uncertain, that the Commons have named Three Months, in which the Treason charged in the Impeachment was committed; and in the Precedent it is only said, *Within some of the Years last past*; so that here the Commons are sufficiently justified, in the Articles exhibited by them, by the Precedent I have mentioned; and there Judgment passed, and nothing of this Nature was offered in Arrest of Judgment. I hope this will satisfy your Lordships, that this Impeachment is sufficient, notwithstanding this Objection; and I hope it will never be allowed here as a Reason, that what quashes an Indictment in the Courts below, will make insufficient an Impeachment brought by the Commons of *Great Britain*.

Mr. *Attorney-General*. MY Lords, the Council for the Prisoner have made two Objections, as I apprehend, in Point of Law, which I would give a short Answer to, without taking Notice of the other Matter, which was spoke to by one of the Gentlemen, contrary to the Orders of the House.

The first Objection is, That there is no certain Day charged in the Impeachment, when the Treason was committed.

The Second is, That as to several of the Overt-Acts, there is no Time mentioned at all.

I would follow the Steps of the Learned Gentleman who spoke before me, and I think has given a good Answer to these Objections. I would take Notice, that we are upon an Impeachment, and not upon an Indictment. The Courts below have set Forms to themselves, which have prevailed for a long Course of Time, and

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and thereby are become the Forms by which thoſe Courts are to govern themſelves; but it never was thought, that the Forms of thoſe Courts had any Influence on the Proceedings of Parliament. In *Richard* the Second's Time, it is ſaid in the Records of Parliament, that Proceedings in Parliament are not to be governed by the Forms of *Weſtminſter-Hall*.

I beg leave to take Notice, in Anſwer to this Objection, that though it is the uſual Form in the Courts below, to alledge a certain Day, on which the Crime is charged to be committed; yet at the ſame Time they add, (and at divers other Days and Times) and that Day which is laid, is only for Form ſake; but that Day is not material; they are not bound to prove the Crime committed on that Day, but they may prove the Defendant Guilty at any Time, either before or after the Day laid in the Indictment. There has been produced by the honourable Gentleman who ſpoke before, a Precedent in Parliament, much ſtronger than this Caſe; it is the Caſe of the Lord *Stafford*; there is not ſo much Certainty as there is in this Impeachment. Here it is ſaid, that on or about the Months of *September*, *October*, or *November*, or on or about one of them, the Crimes charged in the Impeachment were committed; but all that is ſaid in my Lord *Stafford*'s Caſe is, *That there had been, for many Years then laſt paſt, a damnable Conſpiracy carried on*; and when they came to charge the Noble Lord with particular Facts, there is no Time mentioned at all.

One of the Gentlemen cited another Caſe in Parliament, which was Dr. *Sacheverell*'s Caſe: There was in that Caſe an Exception taken to the Impeachment for Uncertainty; and it was ſaid

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ſaid and argued from the Forms of the Courts in *Weſtminſter-Hall*, that where Indictments were for Words ſpoke or writ, the Words muſt be laid as they were ſpoke or wrote: And the Opinion of the Judges was, that it was neceſſary according to the Forms of the Courts below; but it was reſolved to be otherwiſe in the Court of Parliament, and they were not bound but by their own Forms; ſo that upon this Head we apprehend, we are clear of the Forms of Law in the Courts below, and that they are of no Uſe; ſince if a certain Day is laid, they are not by Law bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The Second Objection is, That there is no Time laid for ſome of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the ſeizing of *Preſton*; and in the inferiour Courts it has been held, that it is not neceſſary there ſhould be a Day and Place alledged for every Overt-Act.

We think this Objection has no Weight in it; and therefore would not ſpend more of your Lordſhips Time in it: We are in the Caſe of an Impeachment, and in the Court of Parliament. Your Lordſhips have already given Judgment againſt Six upon this Impeachment, and it is warranted by the Precedents in Parliament; therefore we inſiſt that the Articles are good in Subſtance, and according to the Forms of Parliament.

Mr. *Cowper*. THE Objection, as ſtated by the Priſoner, and upon which his Council have argued, is this: That the Time of the Treaſon committed, is not laid in the Im-

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Impeachment with ſufficient Certainty. The Council have acquainted your Lordſhips with the Practice of inferiour Courts, and have inſiſted too much upon the Precedents of Treſpaſſes, and other Crimes, ſet forth in Indictments, conſidering the Queſtion ariſes upon the Uſage and Practice of the High Court of Parliament; and they cannot but know, that the Uſages of Parliament are Part of the Laws of the Land, although they differ in many Inſtances from the Common Law, as practis'd in the inferiour Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impeachment, ſhould govern themſelves by Precedents of Indictments, in my humble Opinion, they would depart from the ancient, nay, the conſtant Uſage and Practice of Parliament.

It is well known, that the Form of an Impeachment has very little Reſemblance to that of an Indictment; and I believe the Commons will endeavour to preſerve the Difference, by adhering to their own Precedents. One of the Learned Gentlemen has ſaid, that he had not Time to ſearch Parliamentary Precedents. That Gentleman ſeldom wants Time to make himſelf ſerviceable to his Clients; but when he has more Leiſure, I believe he will not find one Precedent, where, in the Caſe of an Impeachment of High Treaſon, there hath been a certain Day or Time laid when the Treaſon was committed. The Precedent that hath been mentioned of my Lord *Stafford*, is directly otherwiſe: There your Lordſhips will find it laid thus: That *for many Years laſt paſt*, there has been contrived and carried on by Papiſts, a traiterous and execrable Conſpiracy. And afterwards, when it comes to charge the Treaſon

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ſon and Overt-Acts, it alledges, *they were done* and committed *within the Time aforeſaid.* And yet we don't find any Exception was taken for want of Certainty, although not ſo much as a Year was laid with Certainty, within which the Treaſon was committed.

In the Caſe of my Lord *Winton*, the Commons have charged, that his Lordſhip, together with *James* Earl of *Derwentwater*, and ſeveral others, as falſe Trayto rsto his Majeſty, did, in or about the Months of *September*, *October*, or *November*, 1715. traiterouſly imagine and compaſs the Death of the King; that his Lordſhip, and the reſt, to accompliſh their ſaid traiterous Purpoſe, did, in or about the ſaid Months, or ſome of them, conſpire and agree to levy War within this Kingdom, in order to depoſe and murther his Majeſty; that his Lordſhip did, within the Time aforeſaid, traiterouſly levy War and Rebellion in the Bowels of the Kingdom; and that he, together with his Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforeſaid, traiterouſly ſeize and poſſeſs themſelves of the Town of *Preſton*; and did then and there cauſe and procure a miſerable and horrid Slaughter and Murther of many of his Majeſty's faithful Subjects. So that, my Lords, here is a Certainty, not only of the Year, but of the Months and Days; and the Treaſons committed by the Priſoner, are, with Submiſſion, not only charged with Certainty, as to the Point of Time, but are charged with a great deal more Certainty than was neceſſary, in a Caſe where his Lordſhip's Treaſons began at *Seaton* Houſe, and continued from thence till the Surrender of *Preſton*. Surely

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Surely there is not the leaſt Weight in the Priſoner's Objection; for even in the Caſe of an Indictment, though it may be neceſſary to lay a Day; yet it is not neceſſary to prove the Treaſon to be done upon that Day; ſo that even in inferiour Courts it is an immaterial Form. One would think, if it be neceſſary to aſſign a Day certain, it ſhould be neceſſary alſo to prove the Treaſon to be done upon that Day; but it is not requiſite to prove the Treaſon upon the Day; therefore in inferiour Juriſdictions it ſeems rather a Form than Subſtance. The Courts below have, it's true, their Forms; many Forms, for which no Reaſon can be given; but I believe in Parliamentary Proceſs, nothing is neceſſary that is not material.

Sir *W. Thomſon.* MY Lords, We humbly apprehend, that the Exception taken in Arreſt of Judgment, has no Foundation in Law or Reaſon.

As to the Law, we muſt refer to the Forms of Proceedings in the Court of Parliament, which is the Law of Parliament, and which muſt be owned to be Part of the Law of the Land. It has been mentioned already to your Lordſhips, that the Precedents in Impeachments are not ſo nice and preciſe in Form, as in the inferiour Courts; and we preſume your Lordſhips will be governed by the Forms of your own Court, (eſpecially Forms that are not eſſential to Juſtice) as the Courts below are by theirs; which Courts differ one from the other in many Reſpects, as to their Forms of Proceedings; and the Practice of each Court is eſteemed as the Law of that Court.

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As to the Reaſons alledged, to ſupport the Exception, they will receive a plain Anſwer.

'Tis ſaid, that 'tis neceſſary to alledge a certain Day in an Impeachment when the Fact was committed, that the Defendant may be able to make his Defence, that he may produce Witneſſes to give an Account where he was at the Time he is accuſed to have been guilty. And one of the Learned Council was pleaſed to ſay, that this is requiſite in Indictments for the ſmalleſt Offences, and ought to be much more ſo in capital Caſes, and in Impeachments for ſo high a Crime as Treaſon. My Lords, that Gentleman knows very well, that the Day which is mentioned in an Indictment, is not material to the Purpoſe of making a Defence as to that Time only; for that the Defendant muſt come prepared to give an Account of his Innocence, all the Time between the Day alledged, and the Indictment found. And in this Caſe, there is no Hardſhip on the Noble Lord at the Bar. Here is one of the Treaſons alledged to be within the Compaſs of Five Days, (*viz.* the ſeizing of *Preſton*, levying War there, and engaging the King's Troops). If he could have given an Account of himſelf, to have been elſewhere at thoſe Times, it might have been of Service to him: But that happened very unfortunately for him to be otherwiſe; and your Lordſhips have found him guilty of thoſe Facts, on or about thoſe Five Days. Which has created a ſecond Reaſon to be offered to your Lordſhips, that the Time alledged is not ſufficiently certain, (*viz.*) to what Day ſhall the Forfeiture of the Defendant's Eſtate relate? If 'tis taken the moſt favourably for the Defendant, the Conviction ſhall

ſhall operate ſo as to make the Forfeiture only from the laſt of theſe Days, and I don't apprehend any other Inconvenience. But to infer, that, for that Reaſon, no Judgment at all ſhall be given upon this Conviction, where the material, the ſubſtantial Part of the Iſſue is found, ſeems not to be a right Conſequence.

My Lords, We conceive, for theſe Reaſons, and what has been mentioned before, this Exception has no Weight in it, and hope your Lordſhips will over-rule it.

Lord *High Steward*. Gentlemen of the Houſe of Commons, I ſuppoſe you don't oppoſe the Councils replying to you; afterwards, if you have any thing to offer, you may be heard to it.

Att. Gen. My Lords, We don't object to it, if the Commons have the Liberty of ſpeaking afterwards, and cloſing, which they inſiſt upon as their Right.

Lord *High Steward*. Gentlemen, you may reply.

Sir *C. Phipps*. Is it your Lordſhips Pleaſure that we reply?

Lord *High Steward*. You may reply.

Sir *C. Phipps*. IF your Lordſhips pleaſe, we do not, with great Submiſſion, apprehend they have anſwer'd our Objection: But before I take Notice of the Anſwers, I beg leave to ſet the Learned Gentleman that ſpoke laſt right in one thing, wherein he did miſapprehend me. He was pleaſed to ſuggeſt, that I ſaid the Day laid in an Indictment was material: I don't remember I ſaid ſo; for I never thought the Day ſo material, that there was a Neceſſity to prove the Treaſon to be committed

ted upon that very Day; I did say, there ought a certain Day to be alledged in Indictments, and that there always is; but how material that Day is, when alledged, is another Consideration; but I conceive the Day laid in an Indictment, ought to be very near the Time, if not upon the very Day, the Treason is supposed to be committed, for the Reasons I have before offered; and I take the constant Practice to be so. I perceive all the Gentlemen, who have spoke in Answer to me, have been pleased to admit, that in Indictments for Treason, and other capital Offences, there is a certain Day always alledged. The Honourable Gentleman that spoke first, was pleased to make a Difference between an Indictment and an Impeachment; that an Impeachment is a Parliamentary Proceeding; and that the Parliament, in their Proceedings, are not ty'd up to such a strict Form as the Courts below. I have already spoken fully to this Point; and therefore shall not trouble your Lordships with any Repetition, but submit to your Lordships Judgment, whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted? And whether, by the *Lex Parliamentaria*, as much Certainty is not required in one Case, as in the other? The same Gentleman was pleased to observe, that the Impeachment in my Lord *Stafford*'s Case was more general than this; for there it was charged, *That for many Years last past, there had been a Conspiracy to alter and subvert the Government*, &c. In Answer to which, I beg leave to take Notice, that the Impeachment of that Lord, begins with an Account of the Plot in general; and in that Case there is

no

no Doubt, but such a general Allegation was sufficient. But whether the particular Part, which my Lord *Stafford* had in that Plot, be not more certainly alledged, I must beg leave to refer to the Trial, for I cannot take it upon my Memory to say one Way or other. But whether it was so or no, I think is not material; for that Honourable Person admits, that no Objection was made to that Impeachment, for the Uncertainty of the Charge: If such Objection had been made, and over-ruled, it would have been a full Answer to us; but since no Notice was taken of it, our Objection is as strong, and of the same Force, as if that Case had never happened.

A Learned Gentleman, of great Eminence in the Law, was pleased to observe, that frequently in Indictments for Treason, the Offence is laid to be committed, *diversis aliis diebus & vicibus*, which is true; but then in all such Cases, there is a particular Day first charged in the Indictment; and I believe that Learned Gentleman, or any other of the Long-Robe, will not say, that an Indictment conceived in such general Terms, without alledging a particular Day, would be good. As to that Part of the Impeachment, which relates to the taking of *Preston*, though that seems more certain than any other Overt-Act; yet I have shewed, that the Words, *or about*, leave it at large, and render it uncertain.

My Lords, this is what we humbly offer by way of Reply; and humbly submit to your Lordships Judgment, whether our Objections are not good, notwithstanding what has been said in Answer to them.

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Mr. *Williams*. MY Lords, I must submit it to your Lordships, whether the Learned Managers have answered the Objections, which we have humbly laid before your Lordships in Arrest of Judgment.

The Managers are pleased to object, that we are attempting to quash an Impeachment of the Honourable House of Commons for High Treason, and that this has not been known.

But, my Lords, with great Submission, we are not endeavouring to quash this Impeachment. We are so far from it, that we must admit, that the Courts of *King's-Bench* will not quash Indictments for Treason, nor Indictments for Felony, nor even Indictments for any gross Misdemeanours, but will put the Party to plead to such Indictments; but in the present Case, where the Matter in Issue has been try'd, and the unhappy Lord is convicted; if this Impeachment be defective, as I humbly hope and insist it is, then what other Way, what other Method has this unfortunate Lord at the Bar, to take Advantage of this Defect, but by offering it to your Lordships in Arrest of Judgment, which on my Lord's Behalf, we now humbly do.

It seems admitted, as I apprehend, that had the present Question been upon an Indictment, instead of an Impeachment, that then the Exception might have prevailed: But the Managers are pleased to insist, that the Law and Course of Parliaments justify this Omission in Case of Impeachments; and for this, an Honourable Manager has been pleased to cite the late Lord *Stafford*'s Case; and that the Impeachment of that Lord was more uncertain, as to the

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the Time laid for the committing the Treason, than the Impeachment now before your Lordships.

My Lords, I must confess I am very unfit to answer an Objection of this Nature, and which concerns the Course of Parliaments: But would beg leave, with the greatest Submission, to observe, that only one Precedent (I beg Pardon if I mistake, I mean that of the late Lord *Stafford*) has been cited against us: It must be submitted to your Lordships, how far that one single Precedent will of it self be taken as a Proof, that this is the Course and Custom of Parliamentary Impeachments, especially when it appears, that the Objection now made, was not made in that Case. It must be submitted to your Lordships, whether repeated and iterated Acts are not requisite to prove this, as well as all other Customs? And that if this were *Lex & Consuetudo Parliamenti*, whether it would not be an easy Matter to cite many Instances in that Behalf; and whether it is not the more necessary in this Case, to cite farther Precedents, in regard the single Case of the Lord *Stafford* may seem, as to this Point, to have lost some Part of its Force, by the later Precedent of Doctor *Sacheverell*'s Case, when even in Case of a Misdemeanour, a certain Day is laid in the Impeachment, when the Misdemeanour is charged to have been committed.

It has been also objected by the Learned Managers, that in Indictments of High Treason, it is usually charg'd, that the Party committed the Treason *diversis diebus & vicibus*, which is as uncertain as the present Impeachment.

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My Lords, it is very true that these Words, (*diversis diebus & vicibus*) are as uncertain as the Words in the present Impeachment; and that these Words are usually put into Indictments: But, with Submission, it is as true, that in all Indictments for Treason, over and besides these Words, there is a certain Day laid when the Treason is said to be committed; and I would beg Leave to know, whether if in Case of an Indictment, the Treason were laid to be committed *diversis diebus & vicibus*, without any further Certainty as to the Day, whether this would not be ill for the Uncertainty? And this Case, with Submission, seems to come nearest to the present Case; and as to the Words, *diversis diebus & vicibus*, though they are frequently mentioned in an Indictment, yet they are only Surplusage, and the Indictment good, whether with them, or without them.

It is likewise objected, That if a certain Day for the committing this Treason had been mentioned in this Impeachment, or in an Indictment, yet it had not been material; because if the Treason had been proved to have been committed on any other Day, the Party must have been found Guilty; and therefore if the Day be immaterial, the omitting of it must be also immaterial.

My Lords, I must admit that the Day, as to the Party indicted, is not, in this respect, so far material; but that if it should be proved, that the Party commited the Treason on a different Day than that laid in the Indictment, yet the Party must be found Guilty; and that it might put too great a Difficulty on such a Prosecution, to hold, that if the Treason be not

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not proved to be committed on the precise Day laid in the Indictment, that therefore the Party, who appears still Guilty of the Treason, should, upon the Nicety of the Time, be found not Guilty; but what I humbly insist on is, that 'tis the constant Course to mention a Day certain in the Indictment; and that the Day thus mention'd in the Indictment is, as I believe, generally the very Day on which the Treason is insisted upon to be committed; and to know this, is, with Submission, of great Use to the Party indicted or impeached, and may very much assist him in his Defence. And I further humbly insist, that the mentioning of a Day certain in the Impeachment or Indictment, for the committing the Treason, is manifestly for the Advantage, and the omitting it, is to the Prejudice of the Crown; in regard as between the Party impeached or indicted, and the Crown, the Forfeiture of the Land to the King, shall relate to that Day which is laid in the Impeachment or Indictment.

My Lords, from hence, with the greatest Deference to your Lordships, I beg leave to infer;

That the mentioning of a Day certain in the Impeachment, is material:

That by Consequence, the Omission of it is also material;

That therefore, in respect of this Omission, the Impeachment is defective;

And in regard of this Defect, I humbly pray that your Lordships would be pleased to Arrest the Judgment.

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Mr. *Attorney-General.* MY Lords, for preserving the Rights of the Commons of *Great Britain*, I shall trouble your Lordships with a Word or two.

I think the Learned Gentlemen have left it now where they left it on their first Speech: They now agree, that the particular Day in an Indictment is but Form; and that the Fact may be proved any Day before or after; and so the Law is in the inferiour Courts.

I only add this, that the Prisoner loses no Benefit, nor gets any, by having a Day charged or omitted; for since it is of no Use, he must provide for his Defence, as if no Day was laid; and since it is immaterial in Indictments, it must be so in Impeachments. We are justified by the Forms and Precedents of Parliament. As to the Answer given to my Lord *Stafford*'s Case, that this Objection was not made there, but that it past *sub silentio*: If that Impeachment had not been thought good, we know he had the Assistance of Learned Council, who were well able to advise him, and who certainly would have taken the Exception. There is no Uncertainty in it that can be to the Prejudice of the Prisoner; we insist it is according to the Forms of Parliament; he has pleaded to it, and your Lordships have found him Guilty.

Lord *High Steward.* My Lord *Winton*, Your Council have been heard, hath your Lordship any thing more to offer in Arrest of Judgment?

Lord *Winton.* If your Lordship will be pleas'd to ask the Council, they will tell you what they have to object.

Lord

Lord *High Steward.* My Lord, You have been told again and again upon this Occaſion, that the Point you would have your Council ſpeak to, muſt be firſt ſtated and propoſed by your ſelf; you have had ſufficient Opportunity to inform your ſelf.

Lord *Winton.* Since your Lordſhip won't allow my Council to ſpeak, I don't know nothing.

Here a Motion was made to Adjourn.

Lord *High Steward.* I once more acquaint your Lordſhip, that as your Council have been allowed to ſpeak; ſo the Queſtion yet is, Whether you have any other Point or Matter for them to ſpeak to, the Lords are ready to hear: Have you any thing elſe to propoſe?

Lord *Winton.* If you will allow my Council to anſwer, he will anſwer.

Then the Houſe was Adjourned about Three of the Clock, and about Five returned again.

Lord *High Steward.* GEORGE Earl of *Winton*, I have already acquainted you, that your Peers have found you Guilty, (*i. e.*) in the Terms of the Law, Convicted you of the High Treaſon whereof you ſtand Impeached.

After your Lordſhip has moved in Arreſt of Judgment, and the Lords have diſallow'd that Motion, their next Step is, to proceed to Judgment.

The melancholy Part I am to bear in pronouncing that Judgment upon you; ſince it is his Majeſty's Pleaſure to appoint me to that Office, I dutifully ſubmit to; far, very far, from taking any Satisfaction in it.

Till Conviction, your Lordſhip has been ſpoke to without the leaſt Prejudice, or Sup-

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position of your Guilt; but now it must be taken for granted, that your Lordship is Guilty of the High Treason whereof you stand impeached.

My Lord, This your Crime is the greatest known to the Law of this Kingdom, or of any other Country whatsoever: And it is of the blackest and most odious Species of that Crime; a Conspiracy and an Attempt, manifested by an open Rebellion, to depose and murther that Sacred Person, who sustains, and is the Majesty of the whole; and from whom, as from a Fountain of Warmth and Glory, are dispersed all the Honours, all the Dignities of the State; indeed the lasting and operative Life and Vigour of the Laws, which plainly subsist by a due Administration of the Executive Power.

So that attempting this precious Life, is really striking at the most noble Part, the Seat of Life, and Spring of all Motion in this Government; and may therefore properly be called, a Design to murder, not only the King, but also the Body Politick of the Kingdom.

And this is most evidently true in your Lordship's Case, considering that Success in your Treason must infallibly have established Popery; and that never fails to bring with it a Civil, as well as Ecclesiastick Tyranny; which is quite another Sort of Constitution than that of this Kingdom, and cannot take Place till the present is annihilated.

This your Crime (so I must now call it) is the more aggravated, in that when it proceeds so far as to take Arms openly, and to make an offensive War against lawful Authority; 'tis generally (as in your Case) complicated with the horrid and crying Sin of murdering

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dering many, who are not only innocent, but meritorious.

And if Pity be due (as I admit it is, in ſome Degree) to ſuch as ſuffer for their own Crimes; it muſt be admitted a much greater Share of Compaſſion is owing to them, who have loſt their Lives meerly by the Crimes of other Men.

As many as have ſo done in the late Rebellion, ſo many Murders have they to anſwer for, who promoted it; and your Lordſhip, in examining your Conſcience, will be under a great Deluſion, if you look on thoſe who fell at *Preſton*, *Dumblain*, or elſewhere, on the Side of the Laws, and in Defence of ſettled Order and Government, as ſlain in lawful War, even judging of this Matter by the Law of Nations.

Alas! My Lord, your Crime of High Treaſon is made yet redder, by ſhedding a great deal of the beſt Blood in the Kingdom: I include in this Expreſſion the brave Common Soldiers, as well as thoſe Gallant and Heroick Officers, who continued faithful to Death, in Defence of the Laws; for ſure but little Blood can be better than that, which is ſhed while it is warm in the Cauſe of the true Religion, and the Liberties of its Native Country.

Believe it, notwithſtanding the unfair Arts and Induſtry uſed, to ſtir up a pernicious Exceſs of Commiſeration, towards ſuch as have fallen by the Sword of Juſtice; (few, if compar'd with the Numbers of good Subjects, murdered from Doors and Windows at *Preſton* only) the Life of one honeſt, loyal Subject, is more precious, in the Eye of God, and all conſidering Men, than the Lives of many Rebels and Parricides.

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This puts me in Mind to observe to your Lordship, That

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There is another Malignity in your Lordship's Crime, (open Rebellion) which consists in this, That it is always sure of doing Hurt to a Government, in one Respect, though it be defeated; (I will not say it does so on the whole Matter.)

For the Offence is too notorious to be let pass unobserved, by any Connivance: Then is a Government reduced to this Dilemma; if it be not punished, the State is endangered, by suffering Examples to appear, that it may be attack'd with Impunity; if it be punished, they who are publickly, or privately Favourers of the Treason, (and perhaps some out of meer Folly) raise undeserved Clamours of Cruelty against those in Power; or the lowest their Malice flies, is, to make unseasonable, unlimited, and injudicious Encomiums upon Mercy and Forgiveness, (things rightly used, certainly of the greatest Excellence.)

And this Proceeding, it must be admitted, does some Harm with silly, undistinguishing People.

So that Rebels have the Satisfaction of thinking they hurt the Government a little, even by their Fall.

The only, but true Consolation every wise Government has in such a Case, (after it has tempered Justice with Mercy, in such Proportion as sound Discretion directs, having always a Care of the publick Safety above all things) is this:

That such like Seeds of unreasonable Discontents, take Root on very shallow Soil only; and that therefore, after they have made a weak

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shoot, they soon wither, and come to nothing.

It is well your Lordship has given an Opportunity of doing the Government right, on the Subject of your Surrender at *Preston*.

How confidently had it been given out by the Faction, that the Surrender was made on Assurances, at least Hopes insinuated of Pardon: Whereas the Truth appears to be, that Fear was the only Motive to it; the evil Day was deferred; and the Rebels rightly depended, fewer would die at last by the Measures they elected, than if they had stood an Assault: They were awed by the experienc'd Courage, Discipline, and Steddiness of the King's Troops; and by the superiour Genius and Spirit of his Majesty's Commanders, over those of the Rebels; so that in Truth they were never flatter'd with any other Terms, than to surrender as Rebels and as Traytors; their Lives only to be spar'd till his Majesty's Pleasure should be known.

It was indeed a Debt due to those brave Commanders and Soldiers, (to whom their King and Country owe more than can be well express'd) that their Victory should be vindicated to the present and future Ages, from untrue Detraction, and kept from being sully'd by the Tongues of Rebels, and their Accomplices, when their Arms could no longer hinder it.

'Tis hard to leave this Subject without shortly observing, that this Engine, which sets the World on Fire, a lying Tongue, has been of prodigious Use to the Party of the Rebels, not only since, and during the Rebellion, but before,

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before, while it was forming, and the Rebels preparing for it.

False Facts, false Hopes, and false Characters, have been the greater Half of the Scheme they set out with, and yet seem to depend upon.

It has been rightly observed, your Lordship's Answer does not so much as insist, with any Clearness, on that which only could excuse your being taken in open Rebellion; That you was forced into it, remained so under a Force, and would have escaped from it, but could not.

If you had so insisted, it has been clearly proved, that had not been true; for your Lordship was active and forward in many Instances, and so considerable in a Military Capacity among your Fellow Soldiers, as to command a Squadron.

These, and other Particulars, have been observed by the Managers of the House of Commons, and therefore I shall not pursue them further.

But conclude this Introduction to the Sentence, by exhorting your Lordship, with perfect Charity and much Earnestness, to consider, that now the Time is come, when the Veil of Partiality should be taken from your Eyes, (it must be so when you come to die) and that your Lordship should henceforward think with Clearness and Indifference, (if possible) which must produce in you a hearty Detestation of the High Crime you have committed; and, being a Protestant, be very likely to make you a sincere Penitent, for your having engaged in a Design, that must have destroyed the holy Religion you profess, had it taken Effect.

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Nothing now remains, but that I pronounce upon you that Sentence, which the Law ordains, and which sufficiently shews, what Thoughts our Ancestors had of the Crime, of which your Lordship is now Convicted: *Viz.*

'That you, *George* Earl of *Winton*, return 'to the Prison of the *Tower*, from 'whence you came; from thence you 'must be drawn to the Place of Exe-'cution; when you come there, you 'must be hang'd by the Neck, but not 'till you be dead; for you must be 'cut down alive, then your Bowels must 'be taken out, and burnt before your 'Face; then your Head must be sever'd 'from your Body, and your Body di-'vided into four Quarters; and these 'must be at the King's Disposal.

And God Almighty be merciful to your Soul!

And after Silence, the Lord *High Steward* stood up uncover'd, and declaring there was nothing more to be done by Virtue of the present Commission, broke the Staff, and pronounced it dissolv'd.

And then the House was Adjourn'd to the Chamber of Parliament.

It appear'd by some Accounts given the Court, during the Trial of this Lord, that he had attempted to make his Escape out of the *Tower*; which he afterwards effected; but the Government did not think fit to issue any Proclamation for taking him; and so he is out of the Way of being farther spoke of.

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The next Proceedings of this Nature, were against those of the Rebel Prisoners, confin'd in *Newgate* and the *Marshalsea*; concerning whom, the Commission of *Oyer* and *Terminer* met at the Court of *Common Pleas*, the Beginning of *April* 1716. where Bills were found against *Thomas Forster*, Esq; Brigadier *Mackintosh*, and others; the Two former, with some others, made their Escapes afterwards out of *Newgate*, as did several others; of whom an Account will be given by it self, as well as of those pardoned, attainted, *&c.* In the mean Time, we shall speak of the several Trials which happen'd at *Westminster* and the *Marshalsea*, the two Places appointed for that Purpose; and this follow'd with their Executions, Speeches, Letters, *&c.*

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AN ACCOUNT OF THE TRIALS OF THE Rebel Priſoners,

In the Counties of

Middleſex and *Surrey*;

By a ſpecial Commiſſion of *Oyer* and *Terminer*, held at the Courts of *Common-Pleas* and *Exchequer* at *Weſtminſter*, and the Court of *Admiralty* in *Southwark*.

Monday, May 7. 1716. *At the Court of* Exchequer, Weſtminſter.

THE Court being ſat, *Richard Gaſcoigne*, Eſq; was firſt ſet to the Bar, where he deliver'd a Petition, which he likewiſe ſpoke to: The Purport of which was, to deſire the ſuſpending his Trial to ſome farther Time, in regard that he wanted a material Witneſs out of the Country, and call'd

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call'd Evidence to prove, that he had endeavour'd before to have had him ready in Town against his Trial; but being a Servant to one Mr. *Townley*, he was gone a Journey with his Maſter, when the Meſſenger ſent by Mr. *Gaſcoigne* went down; and that he had ſince taken the neceſſary Care to have the ſaid Witneſs fetch'd up. The Debate upon this took up a conſiderable Time; but as the Priſoner inſiſted, that this Witneſs would be of great Service to him in making his Defence, by ſwearing to ſome Circumſtances of his being forced into the Rebellion, the Court thought fit to allow him Ten Days Time for bringing this Witneſs to Town: And he was remanded to *Newgate*, with a ſtrict Charge to the keeping him in ſafe Cuſtody.

Henry Oxborough was then ſet to the Bar: The Indictment was open'd by the Attorney and Sollicitor-General, who enlarg'd upon the Heinouſneſs of the Rebellion in general; and in particular, ſetting forth the Part the Priſoner bore in it, *&c.* and to this call'd Witneſſes for the King: Theſe were chiefly, the Reverend Mr. *Patten*, and Mr. *Calderwood*, who acted as Quartermaſter-General to the Rebel Army; and depos'd, That the Priſoner appear'd with the Rebels at their firſt Meeting in *Northumberland*, and had the Reputation of commanding the *Engliſh* under Lieutenant-General *Forſter*; the ſeveral Motions and Marches of the Rebels were recounted by theſe Witneſſes; and particularly, *Calderwood* ſaid, that a Detachment of 200 Horſe being made toward the Lord Viſcount *Lonſdale*'s, they were commanded by the Priſoner.

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Being ask'd, where they saw the Prisoner, and what they observ'd of him? They said, They saw him frequently at the Head of the *English* Horse, in their March from *Rodberry* to *Preston*, where they saw him among the other Chiefs of the Rebels at the Time of the Action, and at the Place where was held their Council of War. Mr. *Patten* declared farther, that after the Council of War was held, to consider on their Submission, he saw the Prisoner go out of the Town, as was then said, to treat with General *Wills*. And *Calderwood* said, that he was present at his Return; and that the Prisoner told the rest, there was no Hopes for 'em, but to surrender at Discretion.

His Council, who were Mr. Serjeant *Darnel*, and Mr. *Kettleby*, insisted in his Defence, *First*, That there was a Misnomer in the Indictment, he being therein call'd by the Name of *Oxborough*; whereas his true Name was *Oxburgh*. And *Secondly*, That tho' indeed it was sworn, that he had been among the Rebels; yet it did not appear, that he had any other Arms than a Sword, which all Gentlemen wear; nor had committed any one Act of Hostility; whereas the late Act for trying Persons in one County, for Treasons committed in another, did require some special Proof of the actual committing that Treason. That as to his being sent out to treat with his Majesty's Generals, the Part of a Mediator, was not under the Construction of manifest Treason, and hoped the most favourable Interpretation would be given for the Prisoner.

To the first Part of this Defence, it was observ'd by the Lord Chief Justice, in his Charge to the Jury, that it appear'd by the King's Evi-

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dence, that he paſſed by the Name of *Oxborough*; and that if it could be proved (as it had been) that he had, at any Time, gone by, and own'd that Name, it was ſufficient to ſupport the Indictment, tho' indeed the Priſoner might write his Name *Oxburgh*, or *Newburgh*.

To this, Evidence were call'd for the King, one of which was the Landlord of a Houſe where the Priſoner had lain; who ſaid, that he went by, and own'd the Name of *Oxborough*; and, on ſome Occaſion, telling the Witneſs his Name, he gave it himſelf that very diſtinct Pronunciation of *Oxborough*. It likewiſe appear'd, that his Majeſty's Officers received, and treated with him by the Name of *Oxborough*.

That as to the other Part of the Defence: If a Man ſhould be found among Rebels, any Ways Aiding, Abetting, Comforting, *&c.* though he was not actually in Arms, or committed Hoſtilities, yet it was Treaſon within the Law; and that the Part of a Mediator, which it was pretended he had acted, ſhew'd plainly the Confidence the Rebels plac'd in the Priſoner.

One of his Majeſty's Officers being ask'd, Whether, in his Treating for the Rebels, he did not include himſelf? Anſwer'd, that he did; and was received, and treated with as a Rebel.

The Priſoner took Occaſion, on going thro' this Part of the Evidence, to ask one of his Majeſty's Officers, *viz.* Colonel *Cotten*, who was preſent when the Priſoner was before Mr. *Wills*, Whether he did not then hear the General give them ſome Hopes or Aſſurance of Mercy, by extolling the Virtues and Clemency of the King? To which Colonel *Cotten* anſwer'd, that

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that he was ſo far from giving them any ſuch Hopes, that when the Priſoner told the General, He could not but be a Perſon of Intereſt, would he recommend them to the King? But he refus'd even that.

The Jury went out, and after a ſhort Stay, brought him Guilty of High Treaſon.

Tueſday, May 8, 1716. *At the Court of* Admiralty *in the* Marſhalſea, Southwark, *the Trials of* James Hume, *Eſq*; *and* John Farquarſon.

THE Evidence againſt Mr. *Hume*, were the Reverend Mr. *Patten*, and others: Theſe depos'd, that they frequently ſaw this Gentleman among the Rebels, both on their March, and at other Times; and that for the moſt Part he wore a Knot, or Cockade in his Hat, which was a Diſtinction generally uſed among the chiefeſt of the Rebels; but they could not ſay, he had any particular Command, or ſignaliz'd himſelf by any Overt-Act. His Council inſiſted for him, that they did not think the Proof was clear againſt him, in not making it appear, that he bore Arms, or had any Share in oppoſing his Majeſty's Forces: But if it ſhould appear that he had, through Indiſcretion, brought himſelf under the Law, which made it Treaſon to appear with thoſe in Arms againſt the Government; yet they hoped, the Court and Jury would conſider him, as a Perſon wholly incapable to act with any thing of Malice, or Fore-thought; for that it was well known, that he was a Perſon of a very weak Underſtanding; a meer Youth, at ſome Times raſh and furious; at other Times, ſtupid and ſilly; and from his very Cradle, ge-

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nerally esteem'd little better than an Idiot; which they call'd some Witnesses to speak to.

This indeed, by his Behaviour, might very reasonably be credited; for either it was true, or he had Judgment enough to feign the Part very naturally; for he frequently laugh'd at the Bar, and shew'd a very wild and odd Sort of Behaviour. But as these Symptoms of his Incapacity, did not fall under the Construction of Law, though it might entitle him to Mercy elsewhere; and in that it appear'd, he had Reason enough to keep under Decorum among the Rebels;

The Jury, after a short Consideration, found him Guilty of High Treason.

John Ferguson, or *Farquarson*, was then set to the Bar: It was depos'd against him, that he was frequently seen among the Rebels on their March, and at some other Places; but the Witnesses were not positive to his bearing Arms; and could not say, he had any Command. The Prisoner made a very pathetick Defence to every Circumstance alledg'd against him; and in his Plea shew'd, that, as a Vassal to the Earl of *Southesk*, he was, in that Lord's Name, violently carried from his own House by a Party of Horse, and brought Prisoner to *Kenmure*'s Army at *Kelso*; that he solemnly protested against serving the Pretender, and endeavour'd frequently to make his Escape; particularly in the North of *England*, where he was taken, and carried back to *Forster*'s Army, and severely reprimanded, and would have been punished with Death, as a Deserter, but was protected by his Kinsman Capt. *Peter Farquharson*, and oblig'd to be more cautious afterwards,

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wards, for Fear of being hang'd or ſhot: That he had no Weapons but a ſmall Walking Sword, and bore no Character, and never once aſſiſted at the Proclaiming of the Pretender; that he was always watched as a ſuſpected Perſon, and often threatned; and that he had frequently declared his Averſion to the Rebellion, and refuſed at *Preſton* to go to the Barricade, when commanded by a Captain of the Rebels, declaring he would not fight againſt King *George*'s Forces; for which Refuſal, he was ſent Priſoner into the Guard-Houſe. All which was own'd by the King's Evidence.

Mr. *Farquharſon* had his Witneſſes examined. Some Gentlemen of the Government in *Scotland*, who knew him for ſeveral Years, depoſed, that they were ſupriz'd to find him among the Rebels; that he had always a fair Character; that he was indeed a Vaſſal to the Earl of *Southesk*; but they had never heard him ſuſpected of Rebellion; and that he had always, to the beſt of their Knowledge, been a Friend to the Government.

The Matter being on both Sides impartially ſumm'd up; the Jury, after a ſhort Stay, brought him in, Not Guilty.

Friday, May 11, 1716. *At the Court of* Common-Pleas, Weſtminſter, *the Trial of* Alexander Menzies, *Eſq*;

THE Evidence for the King againſt this Gentleman declar'd, That they ſaw him firſt at *Perth*, where he joined the Rebels; as likewiſe at ſeveral Places on the March, till they arrived at *Preſton*, where he was alſo ſeen on the Day of Action, in which he aſſiſted a-

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gainſt his Majeſty's Forces: That he had Arms, particularly a Sword; but could not ſay he had any Command.

His Council ſaid in his Defence, that though indeed ſome Circumſtances were ſworn againſt him, which, if true, would make him truly Criminal; yet if their Inſtructions were right, they did not doubt but to ſatisfy the Court and Jury, that the Priſoner had been forced by meer Violence into the Rebellion, and expreſs'd his Diſſatisfaction thereat; and that the Character he bore, would, in a good Meaſure, ſerve to juſtify what ſhould be ſaid in his Defence.

They then call'd Evidence, who depos'd, That when he came to *Perth*, he was brought as a Priſoner, without Sword, or other Arms; and that at *Langholm* he had made an Attempt to get off with the *Scots*, who went away there; that he had been ſeen at ſeveral Places on the March, without any Arms, and guarded.

Theſe Witneſſes being ask'd, If he might not at ſeveral Places have made his Eſcape, if he pleas'd? They ſaid, it was a very difficult Matter to get away, or if retaken, they would be miſus'd. But the Witneſſes for the King made it appear, that they never ſaw any Reſtraint laid on any Perſon; that the Towns they lay at, were open Towns, and no Guard kept; and that when the *Scots* went off at *Langholm*, it was a very eaſy thing to have gone off with them.

The Priſoner to his Reputation call'd the Lord *James Murray*, and other Gentlemen, who gave him a very favourable Character, and added, that they never look'd upon him to be a Man diſaffected to the Government.

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In his own Defence he ſaid, That he had ſeveral Times, ſince his Majeſty's Acceſſion to the Throne, declar'd himſelf againſt the Pretender's Intereſt, and in Favour of the preſent Eſtabliſhment; and that his Family had ſuffered on Account of their Loyalty; that his Houſe lying near *Perth*, he was brought Priſoner thither, and uſed barbarouſly by the Rebels, who threaten'd him with Fire and Sword, in Caſe he refuſed to go with them; but that he forbid his Servants to follow him, nor took any Arms with him, or was follow'd by any of his Tenants; that he was kept a Priſoner under a Guard at *Perth* till the paſſing the *Forth*, and then ſent, and forc'd into a Boat to paſs the ſame, againſt which he ſhew'd great Reluctance; that he was always watch'd while he was among the Rebels, leſt he ſhould eſcape; which he once attempted, but was retaken, and afterwards more ſtrictly looked after; that he had no Arms, ſaving his wearing Sword; neither had he any Command, or was in any Action. But there appeared no Proof of this; and it was obſerv'd, that his appearing with the Rebels, though he had no Command, or was in actual Hoſtilities, was Treaſon in Law.

The Jury, after a pretty long Stay, found him Guilty.

John Robertſon *was this Day ſet to the Bar, in order for his Trial; but there being a Literal Error in the Names of one of the Jury, it gave his Council an Opportunity to inſiſt, that he had not a true Copy of the Jury delivered to him, which the Law expreſly allows; and ſo his Trial was ſuſpended.*

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Saturday, May 12, 1716. *At the Court of* Admiralty *in the* Marſhalſea, Southwark, *the Trials of* Francis Farquarſon, *and* John Ennis.

FRancis *Ferguſon*, or *Farquarſon*, was ſet to the Bar. Againſt him it was depoſed, That he was firſt ſeen in Arms at *Kelſoe*, and at ſeveral Places on the March till they came to *Lancaſter*, where, as well as at ſeveral other Places, the Pretender was proclaim'd; that he was again ſeen at *Preſton*, walking with ſome of the Rebels, with his Sword by his Side; ſome of thoſe Witneſſes being ask'd, If he might not have made his Eſcape from the Rebels, had he attempted it? They ſaid, that they did think he, or any one might; for they ſaw no Confinement laid on them. The Council pleaded for the Priſoner, That he was forc'd into the Rebellion againſt his Conſent and Liking; and to manifeſt this, had ſeveral Times attempted to get away before they came to *Preſton*; but was prevented. Some of the Witneſſes for the Priſoner ſaid, That it was difficult and dangerous to make an Eſcape, one or two of the *Highlanders* being ſhot by their own Party for attempting it. He call'd ſome Perſons, who had known him long, who declar'd, That they had never heard him ſpeak diſreſpectfully of the Government, and that they had always believ'd him a Friend to it; but there was a plain and poſitive Proof to his being in Arms, and no Evidence at all to the Force, nor that he had uſed Endeavours to ſeparate himſelf from the Rebels, which, it ſeem'd by the Evidence, he might very eaſily have accompliſh'd. The Evidence being impartially ſumm'd

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ſumm'd up, and the Law ſtated, it was left to the Jury, who, after ſome Stay, brought him in, Not Guilty.

Upon this Verdict, a great Uproar was raiſed in Court, by clapping of Hands, and ſhouting; for which Inſult upon the Court, two Perſons were apprehended, one of them (who was ſummon'd as a Jury-Man) was fin'd 100 *l.* and to find Sureties for his good Behaviour for a Twelve Month. The other fined 50 *l.* and a Year's Impriſonment.

John Ennis being ſet to the Bar, and the Indictment open'd, it was depos'd in Evidence, That he was ſeen in the Rebellion from the Beginning, at the paſſing the *Forth*, and ſeveral Times on the Rebels March to *Preſton*; here he was likewiſe ſeen, both the Night before, and on the Day of Action, walking with ſeveral of the Rebels, with his Sword on, both in the Streets, and in the Market-place. He had no Witneſſes to contradict any Part of this Evidence; but inſiſted by his Council, That he had been forced into the Rebellion; for being a Vaſſal of the Earl of *Mar*'s, he received an Order from the ſaid Earl, to join him at *Perth*, upon Pain of Fire and Sword, which was brought him by *Jockey Forbes*, the Earl's Bailiff of *Kildrummie*: He ſaid, he underſtood this Summons to be for a Hunting Match, they having been often ſummon'd upon that, and other Occaſions; but knew nothing of any Rebellion till afterwards: He produc'd this Original Letter or Order; but the Court would not let it be read in Evidence, unleſs the Perſon had been there, to ſwear to the Delivery of it.

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He pleaded farther, that though indeed it had been ſworn, that he was ſeen with the Rebels, yet he carry'd no Arms, and wore only a Walking Sword, as he uſually had done; that he would ſeveral Times have left them, but knew not how, having a Wife and ſeveral Children, with whom he would gladly have been. But there was no Proof of this, nor any thing he alledg'd; yet the Jury thought fit likewiſe to acquit him.

This Day Five of the Rebel Priſoners retracted their former Plea, and pleaded Guilty to their Indictments, viz. *the Two* Mr. Douglaſſes, *Capt.* Maclean, *Mr.* Scrimſhaw, *and Mr.* Skeen, *who receiv'd Sentence of Death the ſame Day.*

Tueſday, May 15, 1716. *At the Court of* Admiralty *in the* Marſhalſea, Southwark, *the Trials of* Richard Townley, *and* Edward Tildeſley, *Eſqs;*

Richard Townley of *Townley,* in the County Palatine of *Lancaſter,* Eſq; Againſt this Gentleman it was depoſed, that he appear'd among the Rebels at *Preſton,* was preſent with them in ſeveral Places in the Town: That there was a Troop among them call'd, Mr. *Townley*'s Troop, conſiſting of about 20 Men, which had all Arms of one Sort or other; and in this Troop were his Coachman, his Butler, and his Poſtillion. It was obſerv'd likewiſe, that there had been Money offered to one of the King's Witneſſes, to go out of Town, and not give Evidence.

His Council ſaid in his Defence, That they did allow there had been a very vile and unnatural

tural Rebellion carried on; and that it had been ſworn, that the Priſoner was among the Rebels; but that it did not appear, that he acted any Part among them; but they hoped to ſhew, he came thither by Conſtraint: And as for that which was call'd his Troop, it was an eaſy, nay, a very ſpecious Matter for the Rebels, to give a Reputation to a bad Cauſe, to diſtinguiſh their Forces by the Names of Gentlemen, of the beſt Credit in the Country: That it was true, one of the King's Evidence ſwore, that he ſaw him in a red Waſtecoat, and a Blunderbuſs on his Arm, at the Head of his Troop; but they call'd Evidence, who depos'd, That there was a Perſon ſo diſtinguiſhed, but his Name was *Lennard*, who commanded that Troop ſo call'd; and that Mr. *Townley* had no ſuch Waſtecoat on, during his being at *Preſton*. He call'd Witneſs to prove, that he left his Houſe for Fear of being ſecur'd by the Militia of the Country, who were then gathering together to ſecure Papiſts, and Perſons reputed to be diſaffected to the Government.

The firſt of theſe was his Houſe-keeper, who depos'd, That on the 7*th* of *November*, the Militia of the Country came to her Maſter's Houſe, and ſwore they woud ſhoot him; that they fired a Piſtol into the Room where her Maſter and Miſtreſs were in Bed; though it is remarkable, that this Evidence ſaid after, that her Maſter was gone before they came; and in ſeveral other Matters, anſwer'd very indirectly to ſeveral Queſtions that were ask'd her: She was ask'd, if her Maſter had not among his Cloaths a red Waſtecoat? She ſaid, Yes; but he had it not with him at *Preſton*; that he took

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took with him three Shirts, and a Neckcloth or two; but no Cloaths, except thoſe on his Back.

Being thus driven from his own Houſe, as he ſaid, he went toward *Rochdale*, and there came to the Houſe of one Mrs. *Ramſden*, near that Town, whom he deſir'd to conceal him, telling her, that the Militia were in Purſuit of him, to take him. This Woman depoſed, that he came the ſame Night to her Houſe, and there ſtaid till next Day; but ſome of the King's Forces marching that Way, and a Carriage happening to break near the Houſe, ſhe told him, ſhe fear'd he was not ſafe there, and adviſed him to go toward *Yorkſhire*. But the Priſoner anſwered, That would not be ſafe neither; for the King's Forces were up there.

This Witneſs was ask'd, Why ſhe thought he would be ſafe there? She ſaid, ſhe did not know; but that ſhe thought they would have taken him up. Which produc'd this Obſervation from the King's Council, that it appear'd that the Priſoner ſeem'd afraid of the King's Forces, and of the Militia, who would have done him no manner of Harm, but rather have been a Protection to him; at the ſame time that he had ſent his Servants away with his Horſes to the Rebels, leſt they ſhould fall into the King's Hands, or be of any Uſe in his Service. It was likewiſe obſerv'd, that from the Time he came to *Ramſden*'s Houſe, to the Time he arriv'd at *Preſton*, there was no Account where he was, or had been.

To this he ſaid, he could have given an Account very clearly; but that the Servant who then attended him, was a Priſoner at *Cheſter*, and he could not procure him, though he applied

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plied ſeveral Times to have him up, but underſtood it could not be granted. That from *Rochdale* he ſet out with the ſaid Servant, deſigning to go to *Kirkham*, on the Weſtern Side of *Lancaſter*, as thinking that Part moſt ſafe, having ſent Home to know if it was ſafe for him to return, and found it was not; but by the Way was ſurrounded by a Party of *Highlanders*, and carried Priſoner to *Preſton*, where he alledg'd he remain'd under Reſtraint all the Time, his Horſes ſecur'd, and himſelf ſo watch'd, that he could not eſcape from them, as he intended.

As for his Servants, who were among the Rebels, they had been ſent away with his beſt Horſes, that they might not be ſeiz'd by the Militia; and that he did not direct them to go to the Rebels, nor knew how it came to be ſo.

That as to his being taken by the Rebels, and carried violently to *Preſton*, there was no Proof of it, and every one might allodge the ſame; that as to his being brought Priſoner to the Guard, it was uſual in all Garriſons, when any Strangers enter the Town, to carry them to the Guard to be examined; but it appear'd, that as ſoon as he had diſcover'd who he was, being Brother-in-Law to the Lord *Widdrington*, he had been ſet at Liberty, and went where he would, and might eaſily have made his Eſcape; it appearing by the King's Evidence, that he walk'd where he would, and ſeveral People went in and out during the time he was there; yet he remain'd in the Town to the laſt; that it ſeem'd ſtrange likewiſe, that he ſhould ſend his Servants with his Horſes to the Rebels, who were actually in their Ser-

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vice, under Pretence of ſecuring them, or that they ſhould come there without his Order.

Mr. *Townley* himſelf ſaid, that what was alledged by the King's Council, of his flying from the Militia, or fearing to fall into the Hands of the King's Forces, who would have done him no Wrong, might be true to others; but in the Caſe of Roman-Catholicks, on ſuch Occaſions, they were uſually taken up, their Horſes and Arms ſeiz'd, and themſelves confin'd, ſo that at beſt it was very chargeable and troubleſome to them; to avoid which, they uſually retired till the Noiſe was over, and then returned with Safety to their own Houſes.

He likewiſe call'd Witneſs to prove, that he would have hired a Horſe to get away from *Preſton*; but whether this was before the King's Forces were upon them, or after, did not appear; nor that he ſeem'd diſſatisfied with the Rebellion. Upon the whole, the Jury went out, and after half an Hour's Stay, brought him in, Not Guilty.

Edward Tildeſley of the *Lodge*, Eſq; Againſt him it was ſworn by one Evidence, that hearing a Shout, he ran to ſee what was the Matter, and heard preſently, that Mr. *Tildeſley*'s Troop was come; that thereupon looking out, he ſaw him at the Head of about 20 Men, ſome of them Arm'd, riding with his Sword drawn. There were other Evidence, who depos'd, they ſaw him come into the Town with ſuch Men, but none to the particular of his Sword being drawn, but that one; nor that he appear'd to head them any time after, or was in any Action; but that they were always call'd Mr. *Tildeſley*'s Troop. It was proved, that he was ſeen with ſome of

of the Rebels, and had dined with them, his own Servant waiting on him.

To all which, his Council answer'd for him, That as to the Troop going by his Name, the Reason had been accounted for before. It was true, one Evidence swore, that he saw him with his Sword drawn; but it was to be observ'd, that he said it was about Five or Six a Clock, which at that Time of the Year, was usually dark, and the Evidence might not only be deceiv'd in the Article of his Sword being drawn, but even in the Person himself; but for the latter, it would be easily shewn how he came there, for which they call'd Evidence.

Anna-Maria Tildesley said, she was the Prisoner's House-keeper; that on the *Friday* Morning a great Number of Arm'd Men came to the House, and in a threatning Manner said, they would have him along with them; that they staid some Time, and took such as the House afforded; during which, they kept the Prisoner confin'd in a Room, and would not suffer the Witness to go near him, swearing she should not hinder him from going with them; and accordingly took him away with them.

Mrs. *Tildesley*, who, I think, was the Prisoner's Mother, said, that he came on the Night aforesaid, and she having no Lodging, she sent to an Inn to procure him one; and that he express'd himself dissatisfied at his being brought thither. This was confirm'd by one *Parkinson*, who kept the Inn; and said farther, that the Prisoner and he talk'd of some Law Affair, and not of any thing relating to the Rebellion: But being ask'd where the Prisoner lay the next Night, he said, he did not know.

Anna

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Anna-Maria Tildesley being ask'd by the Prisoner's Council, if she had not heard that he attempted to make his Escape? She said, Yes; and, among other Ways, it was once agreed, that he should go away in Woman's Cloaths; and accordingly a Relation of theirs, who was a pretty Bulky Woman, and of his Size, was actually undressing; but this was unresolv'd on again.

He call'd another Witness, who swore, that the Prisoner would have hired a Horse of him on *Saturday* Morning; and being ask'd, if the Prisoner told him where he was to go? He said, he told him he was to go Home to his own House, for his own Horses were known; and that he express'd himself to this Evidence very much concern'd at his being there.

But it was strictly examin'd into, whether this was not after they heard the King's Forces were coming up? For, no doubt, as it was observ'd, they would, many, or all of them, have been glad of any Means of escaping the Danger that threatned them, when they began to see, they had made a false Conjecture of the Strength of the Rebels, and the Vigilance and Activity of the King's Troops.

The Prisoner call'd Sir *George Warburton*, and some other Gentlemen, to his Reputation, who said, they never heard him speak with Disrespect of the Government; but said, he was a facetious, inoffensive Man.

Upon the whole, it appears that the Jury credited the Plea, that he was brought by Violence, and kept by Constraint; for he was likewise acquitted.

On

On *Wednesday*, May 16, 1716. *At the Court of* Exchequer, Westminster, *the Trials of* Thomas Hall, *Esq*; *and* Robert Talbot.

Richard Gascoigne was set to the Bar, and upon his Request for a Day longer, having a Witness on the Road, his Trial was deferr'd to the next Day. And *Thomas Hall* of *Otterburn*, in the County of *Northumberland*, Esq; was set to the Bar. The Evidence against this Gentleman set forth, That he join'd the Rebels soon after their Meeting at *Plainfield*, and march'd with them to *Preston*, where he was taken.

One Evidence was very positive of seeing him at *Rodberry*, and that he was there with other of the Rebels.

Mr. *Patten* said, he saw him on Horseback among the Rebels near *Wooller*; but his Council disputed, whether that Place was within the County of *Northumberland*; for otherwise that Indictment would fall, and the Attorney-General might bring another Indictment, laid in any other Place, if he saw good. But there was one Evidence, who pretty plainly made this Place out to be within the Limits of the aforesaid County; and that he saw the Prisoner on the March with the Rebels: This Evidence said, he had been seiz'd by the Rebels as a Spy, and kept by them several Days, from whom he met with very severe Usage. Being ask'd by the Prisoner's Council, how he, who had been kept as a Prisoner, could see the Prisoner at the Bar with the Rebels? He said, because he was carried on the March with them, having a Guard with him, so that he saw the Prisoner, and others, being but at a very little Distance.

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The Prisoner himself said, that being a Justice of the Peace, he was at the Sessions at *Almyke*, when he heard of the Meeting at *Plainfield*; that he rode thence to a Friend's House, where he stay'd all Night, and was going Home next Day, when it being a tempestuous Season, as he was stooping on his Horse's Neck, with his Head to the Wind, on a sudden he and his Man were surrounded by the Rebels, and carried away by Violence; nor had he any Arms, or above 7*s.* 6*d.* in his Pocket. His Servant depos'd this, and that his Master was never at *Rodberry* in the Time that had been sworn, but was constantly kept under a Guard of the Rebels: But being cross-examin'd, he appear'd very backward in answering such Questions as were ask'd by the King's Council; nor did it appear, even by his Evidence, that his Master's Horses were confined, but that he look'd after, and had the Charge of them as usual, and his Master rode them at Pleasure. Mr. *Patten* likewise said, that he never saw any Restraint laid on him, but that he was as much at Liberty as himself.

He call'd some to prove, that he had expres's'd his Dissatisfaction at being forced along with the Rebels; and said, that he had no Disaffection to the Government.

But it was observ'd in the Charge to the Jury, which was spoke to by the whole Bench, That it was without doubt, if a Man was seen among Rebels, tho' even he had been forced thither, and had Opportunities after (as it appear'd the Prisoner had frequent ones) to escape from them, and did not do it, but continu'd with his Presence to abet and comfort them, yet it was Treason within the Law.

That

That if that Allegation, of being forc'd away, were ſuffered to paſs, it would be next to impoſſible to come at Evidence to prove them Guilty; ſince every Man might pretend the ſame thing, and that might paſs for Force, which was indeed in Effect only their own Conſent and Contrivance. After a pretty long Trial, the Jury found him Guilty.

Robert Talbot was afterwards try'd. The Evidence againſt him was very full: It was ſwore, that he was preſent with the Rebels on the whole March from *Kelſoe* to *Preſton*, and had the Name of a Captain among them, commanding a Troop of about 24 Horſe; that at ſeveral Places he drew up, and diſciplin'd the ſaid Troop, march'd conſtantly at their Head; and particularly drew them up round the Croſs at *Morpeth*, and was preſent with them whilſt the Proclamation was reading there, for Proclaiming the Pretender; that he likewiſe drew them up, and headed them in the Attack at *Preſton*, being then on Foot. Two of thoſe Witneſſes were Men of his own Troop.

He made very little Defence, and was found Guilty.

Being both ſet to the Bar, and ask'd, If they had any thing to ſay, why Judgment ſhould not paſs? Mr. *Hall* deſir'd a ſmall Time might be granted him, ſaying, he was try'd in a ſtrange Place, where he knew no Body, and by a new Law which he did not underſtand; but, had he Time, he had many Witneſſes, who could prove that he was not diſaffected to the preſent Government, who would give him a good Character. But he was told: It was now too late, and the Court could not, in Juſtice,

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grant his Requeſt. He then ſaid, God's Will be done. Mr. *Talbot* had nothing to offer; and ſo Sentence of Death was pronounced upon them both.

Thurſday, May 17, 1716. *At the Court of* Exchequer *at* Weſtminſter, *the Trial of* Richard Gaſcoigne, *Eſq*;

Richard Gaſcoigne: In the opening of the Indictment againſt this Perſon, it was ſet forth, that he had not only been actually in Arms in *Lancaſhire*, where he was taken; but had likewiſe been early concern'd in the Conſpiracy that led to the Rebellion, particularly in a Riſing which was to have been in the *Weſt* of *England*, the ſeizing of *Oxford*, *Briſtol*, and the *Bath*, for the Pretender. That there had been ſeveral Boxes or Cheſts of Arms directed to the Priſoner, who was in great Truſt and Favour with ſome of the Chiefs engag'd in the Rebellion; and, as it was particularly obſerved by one of the King's Council, there were ſeveral Evidences of his under ſome of their own Hands, as would put the Matter out of doubt; but that there were ſome Reaſons, which render'd it not ſo proper yet to divulge thoſe Evidences; but which would, however, be produced when Time ſerved. The Evidence produced againſt him, was in Manner following:

The Reverend Mr. *Patten* was firſt call'd, who ſpoke to the Rebellion in general, recounting the ſeveral Marches and Tranſactions of the Rebels; he likewiſe ſaid, that he ſaw Mr. *Gaſcoigne* at the *Bull* and *Mitre* Inns at *Preſton*, and Mr. *Forſter*'s Company.

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The next Evidence was one Mr. *Wye*, who depoſed, that coming once to the Dutcheſs of *Ormond*'s, he ſaw the Priſoner in her Grace's Cloſet; that being introduc'd, he told her Grace, he was juſt come from *France*, and had ſeen the Duke but ſix Days before, who was well, and would be here quickly from *Bayonne*; and the Pretender, from ſome other Place: Upon which her Grace call'd for a Map, to find whereabouts St. *Sebaſtian* lay. That he was ask'd by her Grace, what People ſaid at *Paris*, eſpecially in relation to Sir *William Wyndham*; and ask'd Mr. *Gaſcoigne*, Whether it was true, which was ſaid in the publick News, that he had Letters found in his Pocket of dangerous Conſequence? To which Mr. *Gaſcoigne* ſaid, He could not tell; but if it were true, he had thoſe things about him, that a School-Boy would deſerve to be whipp'd for carrying in his Pocket. It being at that Time generally diſcours'd about Town, that Sir *William Wyndham* had ſurrender'd himſelf. *Gaſcoigne* ſaid, that he had ſent, or carried him one of the Proclamations, (but the Evidence could not be poſitive which) and added, if he was taken, their Deſign was ruin'd; for there were a Hundred Gentlemen, who waited only for a Signal, and Sir *William* would be at the Head of 8 or 9000 Men. The Lady *Rocheſter* having ask'd him, (Mr. *Gaſcoigne*) where Sir *William* was? Whether, if he ſhould tell her Ladyſhip, ſhe would not make uſe of it to perſwade him to ſurrender? But if it were only to give Sir *William* Notice of the Proclamation, he told her, that he had already ſent him one. The ſaid Mr. *Wye* farther declared, that when he was in her Grace's Cloſet, he ſaw a Gentleman dreſs'd

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very fine in Laced Scarlet Cloaths, which he underſtood was one of the *Cottons*; and having ſince ſeen Mr. *Cotton*, knows it to be the ſame Perſon.

There were ſome other Circumſtances, which the Evidence *Wye* ſaid Mr. *Gaſcoigne* told him; and that the Priſoner ſaid, that he came to *London*, to learn whether Sir *William Wyndham* had made any Diſcovery.

The Priſoner denied what this Witneſs had ſaid, and ask'd him ſeveral Queſtions, which *Wye* anſwer'd very readily, and ſtuck cloſe in general, with great Aſſurance, to the Truth of what he had ſaid.

On this Occaſion, Mr. *Gaſcoigne* deſired the Dutcheſs of *Ormond*, and Lady *Emmely Butler*, might be call'd; which was accordingly done, and Chairs were placed for them in Court. They were both ſworn, and her Grace being ask'd to give the beſt Account ſhe could, of what paſs'd at the Time that Mr. *Wye* and Mr. *Gaſcoigne* were in her Cloſet, ſaid, That there was indeed ſome Diſcourſe of Sir *William Wyndham* at that Time, about the Proclamation iſſued againſt him. Being ask'd, Whether there was not at that Time ſome Talk of the Pretender, or of *Bayonne*? She ſaid, ſhe thought there might be ſomething ſaid of *Bayonne*; but as to the Particulars of 8 or 9000 Men, or the Signal of a Hundred Gentlemen, ſhe did not remember any ſuch thing; nay, (upon being more nearly queſtion'd) ſhe ſaid, ſhe could almoſt be poſitive, there was no ſuch thing ſaid. Lady *Emmely Butler* ſaid, That what her Siſter had related, was true, and ſhe knew nothing elſe.

Mr.

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Mr. *Wye* was again call'd, and confirm'd his former Evidence, which he perſiſted in very poſitively; when the Priſoner deſired ſome Queſtions to be put to him, which tended to call his Reputation in Queſtion, as to the Courſe of his Life; which Mr. *Wye* anſwered in the following Manner: That indeed he had been ſomewhat extravagant in his Youth, and ſpent his Father a pretty deal of Money: That he had ſerv'd as a Volunteer in the Army in *Spain*, and all thoſe that knew him there, would give him a good Character. He call'd ſome, who had known him for about ſix Months paſt, who ſaid, he had the Character of a very honeſt Man, and behav'd himſelf very well. He ſaid, he could have brought many others to his Reputation; but did not imagine he ſhould have had any Occaſion; and that he could have added many Particulars, to diſcredit the Priſoner's Reputation; but he choſe to omit them, becauſe he would not aggravate things againſt him.

It was obſerv'd, that Part of *Wye*'s Evidence at leaſt was confirm'd; that he was at the Dutcheſs of *Ormond*'s the Time he ſpeaks of, was not deny'd; and as for ſome Particulars, it ſeemed poſſible, that ſome Affairs of a very great Concern might at that Time employ her Grace's Thoughts, ſo as ſhe might not exactly remember or obſerve all that paſs'd.

Another Evidence was Mr. *Nathaniel Wilcox*, one of his Majeſty's Meſſengers, who ſaid, he had a Warrant on the 2*d* of *November* laſt, to go to the *Bath*, to ſeize the Priſoner; but when he came there, heard he had been gone from thence about a Fortnight; and that ſome Cheſts of Arms, which had been ſeized there, were directed to *R. G.* or *G. R.*

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One *Calderwood*, who was Quartermaſter among the Rebels, ſaid, That he ſaw the Priſoner at *Preſton* on the *Friday*, and asking who he was, was told, he was come from the *Bath*, a Warrant being out againſt him; that he was a true Friend to the Cauſe, and would do 'em good Service; that on *Saturday*, the Day the King's Forces came up, he ſaw him ſeveral Times on Horſeback, and ſometimes a Foot, with his Sword drawn, very active in aſſiſting to defend the Town; and that he was preſent where the Council of War was held.

Another ſaid, he ſaw him draw up in Rank with the Rebels that Day; he had particular Reaſon to remember it; for he came ſix Times with Brandy; and that two Perſons, who collected the Exciſe for the Pretender, call'd to Mr. *Gaſcoigne*, to ask him to drink. He repeated this Evidence two or three Times, and added, that Mr. *Gaſcoigne* refus'd to drink.

It was by all agreed, that he did not appear as a Priſoner, but quite otherwiſe. The Priſoner ſaid in his Defence, That the Warrant iſſued againſt him on *Wye*'s Evidence, was the ſole Occaſion of his Misfortune; for the Fear of that Warrant drove him toward the *North*, after he had ſought Shelter in *Stafford* and *Derby-ſhires*; and that he went after to Sir *Roger Bradſhaigh*'s, near *Wigan*, and deſired the Protection of his Houſe; but Sir *Roger* refus'd him: He then ask'd Sir *Roger* to direct him to ſome Tenant of his; but he refus'd that alſo, ſaying, it was the ſame thing; but told him, there was an Inn hard by, where he might lie; that he was ſeiz'd on at a Place call'd *Heſlington*, and carried before Juſtice *Noel* of *Reed*, and after

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after Examination, there discharg'd. He told Sir *Roger*, that he was going toward *Yorkshire*, and ask'd if *Bolton* was not in the Way.

That from *Reed*, he borrow'd Mr. *Townley*'s Man to shew him to *Leverpool*, where by the Way he was seiz'd, and carried Prisoner to *Preston*.

He call'd Sir *Roger Bradshaigh*, and some other Witnesses, to support these Allegations, especially the Person, who, he said, was to be his Guide to *Leverpool*. This Person said, that he was sent by his Master to shew the Prisoner to *Leverpool*, and coming near *Ribble-Bridge*, a Party of the Rebels stopp'd him; and asking where they were going, he said, to *Leverpool*; but they said, he should go along with them, and so carried him and the rest to *Preston*: There were three or four others with them; but he knew not who they were. Being ask'd, if they disarm'd 'em, he said, he did not see that they did; that when he came to *Preston*, he went to his Master's House there, and the rest went farther into the Town. He was asked, who they were that were with the Prisoner; but he said, he did not know. One of the Witnesses had said, that he heard one or two of them were called by the Name of *Cotton*; but this Evidence insisted, he knew not who they were. Nor did it appear by this Evidence, that either the Prisoner, or those with him, were used in the least like Prisoners. This Witness being cross-examined, seem'd very backward to explain some Parts of his Evidence, particularly he could not remember, that he saw any Body at *Reed* but the Prisoner, though there were near 100 Men that brought Mr. *Gascoigne*: He pretended he did not know

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Yorkſhire, though his Maſter had an Eſtate there, and he had been at it, but did not know it was *Yorkſhire*; and, in fine, anſwer'd very indirectly to many plain and neceſſary Queſtions the Court asked him. And it ſeem'd, that Mr. *Gaſcoigne*'s Talk of going into *Yorkſhire*, was only that he was ignorant till then where the Rebels were; but this being two Days after the Rebels arrived at *Preſton*, it ſeem'd really probable, that he had Notice thereof, and ſo chang'd his Rout, and travell'd in the Night, taking the direct Way to *Preſton*, where he was received and reſpected by General *Forſter*.

It was obſerv'd further by the Court, that he complained, all his Misfortunes were owing to the Warrant iſſued on *Wye*'s Information, which forced him to quit the *Bath*, and go towards the *North*, having ſhelter'd himſelf three Weeks in *Stafford* and *Derby-ſhires*; whereas it appear'd, that the Warrant was not granted till the 2*d* of *November*, and he was at Sir *Roger Bradſhaigh*'s the 7*th*. It was likewiſe very ſtrange, nor did any of the Evidence on either Side make it any thing out, how Mr. *Gaſcoigne* came to be diſcharg'd before Juſtice *Noel*, a ſuſpicious Perſon, and in thoſe troubleſome Times; nor indeed, how the other Perſons, who were with *Gaſcoigne*, travelling to *Preſton*, (one or two of whom, one of the Witneſſes ſaid, he heard were call'd *Coſtons*) came to Mr. *Noel*'s Houſe, or fell into *Gaſcoigne*'s Company; Then that they travell'd in the Night, ſetting out, according to their own Evidence, about one or two in the Morning; and to have a Servant ſent with them from that very Houſe toward *Leverpool*, as they pretended, tho' indeed the direct Road to *Preſton*, ſeem'd very

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very ſtrange; but grant it otherwiſe, he had before ſaid, he was going toward *Yorkſhire*, from which *Leverpool* was the direct contrary Way; and in Truth, the Deſign of the Rebels, when they enter'd *Lancaſhire*, was at firſt to have gone to *Leverpool*; but 'tis likely the Priſoner got other Intelligence, and ſo turn'd toward *Preſton*.

After a long and full Hearing, he was found Guilty of High Treaſon, and receiv'd Sentence of Death accordingly.

Friday May 18. 1716. *At the Court of* Exchequer, Weſtminſter, *the Trials of* Nicholas Wogan, Lancelot Mackintoſh, *and* Charles Radcliffe, *Eſqrs*;

JOHN BLAIR, retracting his former Plea, deliver'd a Petition, wherein he ſupplicated the Court, to recommend him to his Majeſty's Favour, and pleaded Guilty to the Indictment.

Nicholas Wogan, who was firſt try'd, made but little Defence. It was prov'd, that he appear'd among the Rebels, had a Command, and was ſeen on the Day of Action. He ſaid ſomething by Way of Excuſe, for being inadvertently led into the Rebellion; and was found Guilty.

Lancelot Mackintoſh: Againſt him it was depos'd, That he march'd with the Rebels, being one of thoſe who came over the *Forth:* He had the Name of a Captain in Brigadier *Mackintoſh*'s Regiment; none of the Evidence could ſay, they ſaw him in any Action, or preſent at any Time at proclaiming the Pretender.

He

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He call'd abundance of Evidences, and even made Uſe of thoſe call'd for the King, to depoſe, that he was forced from his Houſe by a Party from the Earl of *Mar*, and that he was us'd little better than a Priſoner all the Time he was among the Rebels; that it was true, a Commiſſion was offered him; but he refus'd to receive it, ſaying, there were many young Gentlemen fitter, and more deſerving of the Commiſſion than he, who was near 68 Years of Age. He likewiſe call'd Proof, that at the Time of the Revolution, he had his Houſe plundered, and one of his Servants murdered, for refuſing to follow *Dundee* into the Rebellion. He had ſeveral People of Credit to ſpeak for him; as Brigadier *Grant*, and Mr. *Forbes*, Members of Parliament, Mr. *Roſs*, and others, who all ſaid, that they ever looked on him as a Perſon well affected to the preſent Eſtabliſhment.

Another Evidence ſaid, that he was likewiſe his Neighbour, and believed him to be well affected to the Government; that when he has been diſcourſing with ſome *Jacobites* againſt the Pretender, the Priſoner had joined him in Argument againſt thoſe who argued for him. Many things appeared, which ſhew'd him forc'd into the Rebellion at firſt, and that he was not a diſaffected Perſon; but by his continuing with the Rebels, and not eſcaping, or proving that he endeavour'd it, the Law was ſtrong againſt him; for as the Court obſerved, that if a Man be forced into Rebellion, through Fear or Threats, it may be pleaded in Law for him; but then it muſt not be any vain Fear, a Fear of Plundering, or the Loſs of Goods, or Money only, but a Fear of Death, and that actually

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ally proved. The Jury, after a conſiderable Stay, brought him in Guilty.

Againſt Mr. *Radcliffe* it was depoſed, That he was ſeen at *Hexham* with his Brother the Earl of *Derwentwater*, at *Rodberry*, and at ſeveral other Places; that he rode on Horſeback with the Rebels, and kept in their Company. He asking one of the Evidence, what Horſe he rode on, or what Cloaths he had on? Was anſwered, that he often changed his Horſes, and rode, for the moſt Part, in a Scarlet Cloak. It was likewiſe depoſed, that one of the King's Evidence had been offered ſome Guineas to go out of Town, and ſay nothing againſt Mr. *Charles*. He had no Council, and ſaid, that he conceived the Evidence were not poſitive againſt him, and hoped the Court would obſerve what the Law allowed in his Favour. The Jury, after a little Stay, found him Guilty.

Being all ſet to the Bar, and asked, if they had any thing to move in Arreſt of Judgment. Mr. *Radcliffe* ſaid, he was juſt come from Abroad, and coming to ſee his Brother, was unfortunately drawn along with him when that unhappy Affair happened, and hoped the Court would conſider it. He was told, there was a proper Place where this might be heard; but it did not lie there.

Mr. *Blair* ſaid, the Court had promiſed to recommend him for Mercy; but he was told, he might be pardon'd after Sentence, but not before; ſo that Judgment was pronounced upon them all.

On

On Wednesday, May 30. 1716. *At the Court of* Admiralty, Southwark, *the Trials of* John Dalton, *and* William Tunstall, *Esqrs*;

JOHN *Dalton*, Esq; of the County of *Lancaster*, was brought to his Trial: Against this Gentleman it was deposed, that he met the Rebels at *Lancaster*, and was there seen with the Earl of *Derwentwater*, the Lord *Widdrington*, and others; and that the said Earl, with a Number of other Rebels, came to Mr. *Dalton*'s House on *Tuesday*, where they staid all Day, and that he went away with them. One Evidence said, in particular, that she saw him at *Lancaster* on the *Monday*, in the Company beforemention'd; and again, on the *Wednesday* Morning, when she heard him say: *The Business is now done, we have nothing to do but to march to* Preston. Another said, that they heard on the *Sunday*, that the Rebels were to be at *Lancaster* the next Day; when it was clear, even by his own Evidence, that the next Morning he rode out but with one Servant, and went to *Lancaster*, as the Evidence had sworn, which was not at all disputed.

He was likewise proved by several to have been with the Rebels at *Preston*, particularly by the *Horstler* at the *White Bull Inn*, where he usually set up his Horses when he came to that Town, who said, he ran to him to have taken his Horses; but he told the said Evidence, that he was going further. Another remarkable Passage of his being (and confederating) with the Rebels, was proved by the Servant of one *Chorley* of *Preston*. This *Chorley* had some time before seiz'd a Horse of the Prisoner's, by Vir-

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tue of the Act of Parliament, which directs, that no Papist shall keep Horses of such a Size; and when the Rebels were Masters of *Preston*, Mr. *Dalton* came to the Witness, *Chorley*'s Man, and demanded the Horse; the Witness answering him, that his Master was not at Home, (he being gone away with the Dragoons towards *Wiggan*, on the Approach of the Rebels, who he was in Dread of) he then told the Servant, that he would have the Horse; who call'd out his Master's Sister to speak to the Prisoner, whom with Threats he obliged to deliver the Horse; but the Prisoner not thinking him so good as when he was seized, said, they had spoil'd the Horse, and compell'd her to pay him 10*l.* for him, which she did. This was observ'd by the Court and King's Council, to shew the Prisoner acted with Alacrity in the Rebellion; for the Horse had been seiz'd by Law, but he had made Use of Violence, and unlawful Means, to obtain him again, and made his Demands good only by the Advantage of the Power of the Rebels. The Truth of his being at *Preston*, and constantly there in Company of the Rebels, was confirm'd by many other Witnesses.

His Council pleaded for him, that he was forced into the Rebellion, and call'd Evidence to endeavour to prove it. One swore, that the Earl of *Derwentwater*, and others, came to his House on the *Tuesday*, and there lived at Discretion, and call'd for, or took whatever the House afforded; that they were got about the Prisoner, perswading him to go with them, and threatned him with Death, and took away his Arms; but he refused to go, and said, he had no Inclination; and that he heard them

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at high Words, but could not diſtinguiſh what was ſaid. That afterwards the Priſoner was brought out, and put on Horſeback, and went away with them, but ſhew'd Reluctance. He was likewiſe met at ſome Diſtance from his Houſe, riding among the ſaid Company of Rebels, by another Witneſs, who ſaid: He ſeem'd to go unwillingly, that he look'd melancholy, and he could perceive Tears in his Eyes, and his Eyes to look red; but this Witneſs could not but ſay, that he rode as at other Times; and it was pretty extraordinary, as was after obſerved by the Court, that this Witneſs, at the Diſtance of a Street's Breadth, ſhould ſee Tears in the Priſoner's Eyes; or indeed, it might be very probable, that at parting with his Wife, and going on ſuch a dangerous Affair, it might occaſion ſome melancholy Reflections.

He call'd ſeveral to his Character; one of which was the Parſon of the Pariſh Mr. *Dalton* lived in, who ſaid, that ſome Time before the Rebellion, he was at a Wedding with Mr. *Dalton*, who then read him a Letter from *London*, which ſaid, that they expected a Riſing in *Scotland* under the Earl of *Mar*, and that there would be other Riſings in *England*; that he told the Priſoner, he hoped he would not meddle in the Matter; who anſwer'd him, that he had neither Intention nor Inclination to do it; that he lived very happily, and would not endanger himſelf. This Evidence declar'd farther, that he has, at ſeveral other Times, had Diſcourſe with the Priſoner, whom he never heard to expreſs himſelf againſt the Government, and ſo far unlikely to favour the Pretender's Cauſe; that he had ſometimes expreſs'd

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preſs'd ſome Scruples againſt the *Romiſh* Religion: Upon which Occaſion, he was ask'd by the Court, Why he, being a Miniſter of the Church of *England*, did not endeavour to improve thoſe Notions in him, in order to convert him; who anſwer'd, that he had made ſome Eſſay that Way, but then found him alter'd in his Judgment. Upon the whole, he gave him the Character of a very peaceable *Roman* Catholick, as ſeveral others did; and one ſaid, that he had heard him drink King *George*'s Health. One, in another particular, depoſed, that when they had heard of the Rebellion in *Northumberland*, he ſaid to the Priſoner, *Perhaps they will come into* Lancaſhire, *and then they will be about your Houſe:* That the Priſoner anſwer'd, he would have nothing to do with them. This and other Witneſſes ſaid, that he was the moſt peaceable of all the *Roman* Catholicks, and never at the Time of Elections meddled in the leaſt, as ſome did: One of the Members for that County juſtified this, declaring, that asking his Intereſt once, he told him, he would meddle of no Side.

After a very long Hearing, Mr. *Dalton* having nothing farther to ſay, the Court ſumm'd up the Evidence, obſerving firſt the Circumſtances of the Law in Caſes of High Treaſon: That if a Man was ſeen among Rebels, and continu'd with his Preſence to abet and comfort them, tho' he were not actually in Arms, or committed Hoſtilities, yet it was High Treaſon; that the Force mentioned, muſt be a continued Force; that a Man was not only forced away at firſt, but kept as a Priſoner under cloſe Conſtraint all the Time; which appear'd, by ſome Witneſſes examin'd, not to have been the

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Case of the Prisoner at *Preston*, where he was seen at full Liberty, and whence he might have escaped often, if he had attempted it.

As to any favourable Circumstances that might have been given in Evidence for the Prisoner, as to his Character, or peaceable Behaviour, they were proper only in another Place; that Mercy belong'd only to his Majesty, who was a just Dispencer of it; it was his undoubted Prerogative; and it was robbing him of his Right, to take the Power of bestowing it out of his Royal Hands.

After the Court had impartially stated the Case, the Prisoner said, he had a Witness to examine, who would prove, that he was at Home all *Wednesday*, and not that Day at *Lancaster*, as one of the Evidence against him had sworn: He was told, that it was very unprecedented to hear Witnesses after the Charge had been given; but, however, they condescended to it; and this Evidence, who was Mrs. *Dalton*'s Woman, swore him at Home all the Day on *Wednesday*, so that it was left to the Jury which Witness they should believe, in respect to that Point; but then neither of them affected his being afterwards at *Preston*. The Jury went out, and after a very considerable Stay, brought him in Guilty of the Indictment, and he received Sentence accordingly.

When he was ask'd, what he had to say, why Sentence should not pass, he said, he begged the King's Pardon, and desired the Court to intercede with him for Mercy. Upon this Occasion, the Lord Chief Justice *Parker* observed, as he had done before, that the Prisoner, as well as others, had so far abus'd his Majesty's Clemency, by derogating from their for-

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former Submiſſion, and giving the Government all the Trouble poſſible, even in ſtanding it out, and combating with the King to the very laſt, that they might very well expect to meet with ſome Severity, were not his Royal Breaſt always open to the Interceſſions of Mercy, when it was requeſted. That there was one Gentleman, who had retracted his Plea, and own'd the Indictment, and, upon Recommendation, had a Pardon already paſſing the Seals for him; that it would have been very well for the Priſoner to have made his Requeſt for Mercy ſooner; and, as his Lordſhip obſerved, they were not his Friends, who adviſ'd him to do otherwiſe; that recommending of Priſoners to Mercy, was a Part he very much delighted in, and he wiſh'd to have had better Grounds to have done it for the Priſoner; but, however, he would report his Caſe in the moſt impartial Manner to the King.

William Tunſtall, Eſq; was then ſet to the Bar: He made ſome Objections to his being now try'd, in that he ſaid, that he was the laſt in the ſecond Indictment, and was call'd on his Trial the middle of the firſt Indictment; but being told, it was in the Power of the Attorney General to bring on their Trials when he pleas'd, he then acquieſc'd, and put himſelf on his Trial; but on the ſwearing the firſt Jury Man, he told the Court, he would ſave them any further Trouble, by throwing himſelf on his Majeſty's Mercy, and owning his Indictment; which being read to him, he ſaid, he own'd himſelf Guilty of being taken in Arms; but not of any Deſign of murdering the King, which never enter'd his Heart; but

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the Court told him, that he, being a Man of Sense, could not but know, that, had the Rebellion succeeded, it could have ended no other Ways; since it was certain, that his Majesty would not have run away, as their Master they declared for had since done. His Lordship advis'd him to draw up the State of what he had to say in a Petition, and he would recommend it to the King.

Tuesday, May 31. 1716. *At the Court of Exchequer.*

THIS Day, seven Persons were ordered for Trial, *viz. John Thornton*, who being ill, was not brought down: *Philip Hodgson*, Uncle to the Lord *Widdrington*; *Charles Widdrington*, *Peregrine Widdrington*, *Donald Robertson*, alias *Robeson*, *Alexander Macerudder*, and *Thomas Errington*; the latter said, he humbly submitted to his Majesty's Mercy; and appeal'd to the King's Evidence, Mr. *Patten*, to do him Justice, in respect to his being under such Obligations to the Earl of *Derwentwater*, that he could not resist going with him.

The following Persons were this Day arraign'd: *John Nairn*, Son to the Lord *Nairn*; *John Stewart*, Dr. *Patrick Blair*, *George Seton* of *Barns*, who before the Battle of *Dumblain*, went by the Name of the Earl of *Dumfermling*; *James Robertson*, alias *Robeson*; *William Grierson*, Son to Sir *Robert Grierson* of *Lagg*; *John Carnegy*; these pleaded Guilty to their Indictments.

Francis Anderton, Esq; frequently call'd Sir *Francis Anderton*; *Basil Hamilton*, *Archibald Buter*, *William Shaftoe*, and *William Paul*, Clerk; pleaded not Guilty.

Monday

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Monday *the* 4th *of* June, *the Trials of* Richard Butler, James Swinburn, *and* Edward Swinburn, *Esqrs*;

THIS Day Mr. *William Shaftoe* was first set to the Bar, in order for his Trial; but, on better Consideration, he retracted his former Plea of *Not Guilty*, and owned the Indictment; desiring the Favour of the Court to intercede for him to the King.

Then came on the Trial of *Richard Butler*, Esq; of the County of *Lancaster*, and Head of that Family in *England*. Against this Gentleman it appear'd, that he join'd the Rebels at *Kirby*, and march'd with them to *Lancaster*, where he was seen by one or two of the Evidence, at the *Sun Tavern*, in Company with the Earl of *Derwentwater*, Lord *Widdrington*, and others. Mr. *Patten* declar'd, that he saw him at *Garstang*; that Mr. *Butler* ask'd him to drink a Bottle; and that then they went to Mr. *Forster* together. There were several other Evidences against him, who deposed, they saw him at *Preston*, both the Night before, and on the Day the King's Troops came up; that he was that Day in his Wastecoat, with a Case of Pistols stuck in his Breast, seen by Mr. *Patten* marching in the Town, and likewise in the Church-Yard, among those of the Rebels, who were call'd the *Voluntiers*. He made very little Defence, only insisted on his Innocence in general, which the Court observ'd to him, they wonder'd how he could do, after such manifest Proofs of the Treason. The Evidence being summ'd up, the Jury, without stirring from

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their Seats, brought him in Guilty of the Indictment.

James Swinburn. Againſt him it was prov'd, that he was ſeen firſt at *Hexham*, and at ſeveral other Places on the March, as alſo at *Preſton*, both on the Day of Action, and before; that the former Morning he was ſeen, with ſome others, to ride out of the Town towards *Ribble-Bridge*, and was not ſeen after till he was diſmounted, and made Priſoner in the *Church Yard*. He made Uſe of one or two of the King's Evidence, to endeavour to prove himſelf a *Lunatick*. One ſaid, that having been a Servant in the Family, he had heard he had been at a Doctor's for Cure; and that he would ſometimes behave himſelf much like a Mad-Man: Another ſaid, He was related to him, and he was generally eſteem'd not to be right in his Senſes, tho' he had Intervals of Reaſon, and was at ſome Times pretty well. This laſt Evidence was one of the King's Witneſſes, and Father of Captain *John Shaftoe*, ſhot at *Preſton*. The Court took Notice, as to this Point, that indeed if a Man was a *Lunatick*, and that was prov'd, it might ſerve to acquit him in the Law; but then it muſt be ſuch a Madneſs, as ſhew'd a total Deprivation of Reaſon, which appear'd not the Caſe of the Priſoner. The Jury, without leaving their Seats, found him Guilty.

Edward Swinburn, his Brother. Mr. *Patten* declar'd, That he ſaw him at the *Hagh-Head*, an Inn at *Wooler*, where the Evidence himſelf came in to the Rebels; that he there brought with him about 18 Perſons, and the Priſoner told him, *He was Welcome with his Troop, he need*

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need not fear being well receiv'd; and so they went together to Mr. *Forster*. He was likewise seen by other Witnesses several Times with the Rebels on the March, and likewise at *Preston*, out of which he rode with his Brother, and others, and was not seen after, till he was made Prisoner in the *Church-Yard*. The Jury did not leave their Seats; the Fact was plain, and he found Guilty.

This Day, *Basil Hamilton*, Esq; and *James Robertson*, retracted their former Pleas, and own'd themselves Guilty of their Indictments, and the Court promised to intercede for Mercy for them. The latter read a Paper, said he was forced into the Rebellion, acknowledged his Offence to God and Man, and humbly implor'd his Majesty's Pardon.

The same Day, *Archibald Butter*, and the Laird of *Mackintosh*, appear'd at the Bar.; but their Trials were put off.

Monday, 11*th* of *June*, Several of the Prisoners were arraign'd, and *Duncan Mackintosh* was call'd to the Bar, in order to be try'd; but there being a Mistake in the Pannel, it was deferr'd till the 14*th*.

Thursday, *the* 14th *of* June. *The Trial of* Duncan Mackintosh.

Duncan Mackintosh, Brother to Brigadier *Mackintosh*. It appear'd against this Gentleman, that he had been seen on the March among the Rebels several Times, and the Horse describ'd which he rode on. He was

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likewiſe ſeen with them at *Lancaſter*, and at one of the Attacks at *Preſton*, where he acted as a Captain. He inſiſted on his being under the Influence of his Brother, and that he was forc'd into the Rebellion; and call'd ſome Witneſſes to declare, *He had endeavour'd to get from them*, but it was not clear; and he was ask'd, *Why he had not done it, when the* 500 Scots *went off at* Langholme? Upon the whole, after a Trial which laſted five Hours, he was brought in Guilty. During the Jury's going out, *Edward Caſſels* and *Thomas Riddle* being ſet to the Bar, and arraign'd, pleaded Guilty.

The ſame Day, one *William Dale*, Servant to Mr. *Townly* of *Townly*, was taken up in *Weſtminſter*, for attempting to corrupt ſome of the King's Evidence, in relation of what they had to ſay againſt Mr. *Standiſh* of *Standiſh*, and the Honourable Mr. *Howard*, Brother to the Duke of *Norfolk*; and being brought before the Court ſitting in *Weſtminſter*, he was committed to *Newgate*; and of his Trial, ſomething will be ſaid in a proper Place.

Monday, June 15. 1716. *The Trials of* George Gibſon, *and* James Menzies, *Eſqrs*;

THIS Day, the Judges ſat at the Court of *Common Pleas*. Mr. *William Paul* Clerk, was ſet to the Bar, retracted his former Plea, and pleaded Guilty. He ſaid, he had never taken the Oaths to King *George*; and that, when among the Rebels, he diſlik'd many of their Proceedings, and took the firſt Opportunity to get away; which he did before the Action at *Preſton*. However, he humbly threw himſelf on the King's Mercy, ſincerely repenting of his Fault,

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Fault, and pray'd the Interceſſion of the Court in his Favour.

George Gibſon of *Stonecraſt* in *Northumberland*, Eſq; was then ſet to the Bar: Againſt him it appear'd, that he join'd the Rebels on their firſt Meeting, and was ſeen both at *Preſton*, and other Places, among them. He pleaded being forc'd into their Company, and that he had once made his Eſcape from them, and was brought back; but this did not appear: So that the Jury, without going from the Bar, brought him in Guilty.

James Menzies of *Culdare*, was next try'd. It was plainly prov'd againſt him, that he was ſeen among the Rebels at the *Blair* of *Athol*, at *Perth*, at *Seaton*, *Penrith*, and *Preſton*. He pleaded, *That he was forced into the Rebellion, and that his Eſtate was to become forfeited to the Family of thoſe, by whom he was ſo forced; as likewiſe, that he had refuſed to take Arms among the Rebels, and would have eſcaped, but that he was in fear of being ill treated, if he ſhould be retaken.* He called ſome Evidence to this, and it did appear, that he had lain under ſome Force; but not that this Force continu'd: And it was objected by the King's Council, that *he might have eſcaped at* Leith, *after the Rebels came over the* Forth, *being within almoſt Muſket Shot of the Duke of* Argyle's *Forces, and within a ſmall Mile of* Edinburgh, *as well as that he might have gone off with the* 500 Scots *at* Langholme. After about an Hour's Stay, the Jury brought him in Guilty; but requeſted by their Foreman, conſidering there were many Circumſtances, which appear'd favourable to the Priſoner, that Sentence

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tence might be deferr'd till his Caſe was repreſented to the King; which the Court was pleaſed to comply with. And this Gentleman had ſoon after his Pardon and Liberty.

Saturday, June 16. 1716. *The Trial of* Ralph Standiſh, *Eſq*;

RAlph *Standiſh* of *Standiſh*, Eſq; Againſt this Gentleman it appear'd by the Evidence, that he had been ſeen among the Rebels at *Preſton*, but not in Arms. He pleaded, that he came to *Preſton*, where the Court is kept for the County Palatine of *Lancaſter*, about a Suit he had depending there, and named ſome Perſons who were employed in that Suit; but this was not made out. He had indeed the Character given him, of one of the moſt peaceable *Roman* Catholicks; and he endeavoured likewiſe to prove, that he had been kept at *Preſton* under Reſtraint; and that many People, who came to Market, were ſtopt by the Rebels from going out of the Town; but it did not appear to be his Caſe: And the Jury well weighing the Matter, found him Guilty of the Indictment.

Friday, June 22. *The Trials of* William Mackintoſh, *and* Andrew Pitcairne.

WIlliam *Mackintoſh*. He was prov'd by ſome of the Evidence, to have been among the Rebels. But he made it appear, that he was forced into the Rebellion by Brigadier *Mackintoſh*, at the Inſtigation of the Earl of *Mar*, whoſe Tenant or Vaſſal he was; that he had ſeveral Times attempted to get from among the Rebels, but was prevented, and ill uſed by them for it; that he was always uſed with Diſreſpect

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ſpect among them, and would never conform to their Diſcourſe, nor the Healths they drank; but always ſpoke well of King *George*, and his Government, and drank his Health, in Oppoſition to the Pretender's; for which he had often been inſulted by them, and was to the laſt treated as one they had an Averſion to. At the ſame Time,

Andrew Pitcairne, the Son of Dr. *Pitcairne*, was brought on his Trial. Againſt this Gentleman it was plainly prov'd, that he was with, and active among the Rebels. He made very little Defence, and was found Guilty.

Friday, June 29. *The Trial of* James Cornwall, *&c.*

THIS Day, *James Menzies* of *Culdare*, before ſpoke of, pleaded to a Pardon. And ——— *Thoruton*, Eſq; pleaded Guilty. *James Cornwall*, upon Evidence of his being with the Rebels, was convicted; but many Circumſtances appearing favourable for him, he was recommended by the Jury to his Majeſty's Mercy; which he afterwards obtained.

Archibald Butter was the ſame Day brought to be try'd; but as he had a Petition lying before the King, it was not thought proper to enter on his Trial, till an Anſwer was given thereto. The ſaid Petition ſet forth, 'That he was 'taken from School, and forced into the Rebel'lion; from which he once eſcap'd, but was re'taken by the Rebels; and humbly begg'd, 'that he might be permitted to return to his 'Studies, which, as well as the Remainder of 'his

' of his Life, ſhould be wholly employ'd in his ' Majeſty's Service. This Petition being back'd by powerful Sollicitations, and his Youth pleading in his Favour, the King was pleaſed to grant him his Pardon.

This Day alſo, whilſt the Jury were gone out to conſider of their Verdict againſt Mr. *Cornwall*, it was mov'd by the Council for Mr. *Nicholas Wogan*, (now under Sentence of Condemnation) that Mr. *Patten* might be examined touching the Behaviour of the ſaid Mr. *Wogan* at *Preſton*, in Support of the Allegations of a Petition then lying before his Majeſty in his Behalf. Accordingly Mr. *Patten* was call'd upon, and ask'd, if he knew Major *Preſton*; and if the ſaid Major deſired that Mr. *Nicholas Wogan*, one of the Rebel Captains, might be civilly treated, if he was made Priſoner, for his Behaviour in bringing the ſaid Major in a Priſoner to the Rebels? Mr. *Patten* anſwer'd, That being with the ſaid Major, after he was made a Priſoner, and then very much wounded, he heard him ſay: *You will never be able to withſtand the King's Troops: If I die, I deſire that Gentleman*, (meaning Mr. *Wogan*) *may be civilly uſed, if he be made a Priſoner, for his great Civility to me when I was taken.* Mr. *Patten* added, that Mr. *Wogan* behaved himſelf well, and was wounded in the Cheek, in endeavouring to bring off Major *Preſton*.

Thurſday, July 5. *At the Court in the* Marſhalſea *in* Southwark, *the Trials of Mr.* John Winram, *and Mr.* George Hume.

JOHN *Winram*. Againſt this Gentleman it appeared, that he joined the Rebels at *Kelſoe*, and was ſeen on the March with them.

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To which he pleaded, that he was brought in a Priſoner, and was ſo kept; but the Evidences he call'd to endeavour to prove it, were not poſitive, ſo he was found Guilty.

George Hume. It was ſworn, that he was ſeen among the Rebels at ſeveral Places, and, with many of them, brought a Priſoner to *Wigan*. He inſiſted upon the Inſufficiency of the Evidence; and pretended, that he was never in Arms, and only came to fetch his Son out of the Rebellion; but the Proofs were plain againſt him, and he was found Guilty.

This Day Mr. *Balfour* pleaded Guilty.

Friday, July 6. *At the* Marſhalſea, *&c. the Trial of* George Hume, *Eſq*;

THere was nothing ſingular in this Gentleman's Caſe, the Evidence was full, in regard to his being among the Rebels; and he made no material Defence, and was found Guilty.

Saturday, July 7. *At the Court of* Exchequer, Weſtminſter, *the Trial of* Francis Anderton, *Eſq*; *frequently call'd Sir* Francis Anderton.

FRancis *Anderton*, Eſq; It appear'd againſt this Gentleman, by ſeveral Witneſſes, that he was among the Rebels at *Preſton*; and particularly, that ſome of them came to his Lodgings, to call him on the *Saturday* Morning, before the King's Troops came up, and he went with them; the Deſign being, as was then ſaid, to fall on General *Wills*, before he was joined by General *Carpenter*. It was ſufficiently prov'd, that

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that he was with the Rebels, and often seen in their Company. He call'd abundance of Witnesses, and made a long Defence, endeavouring to prove, that he came to *Preston* about private Affairs, and knew nothing of the Rebels till he came thither; and that he attempted to get out again; but was prevented by Guards and Barricadoes. But some of the King's Witnesses being call'd on, and ask'd, if they thought any Body might not have gone out of *Preston*, if they were so minded, any Time before the King's Troops came up, and if many did not do so? Said, they thought they might, as they had said in several former Trials. He had several Witnesses, who gave him a favourable Character, *That of a* Roman *Catholick, he was a very peaceable one.* But in regard he had been among the Rebels, and had not escap'd, as it appear'd he might have done, the Jury, after a short Stay, brought him in Guilty.

Tuesday, July 10. *At the Court of* Exchequer, Westminster, *the Trial of* Edward Howard, *Esq;*

EDward *Howard*, Esq; Brother to the Duke of *Norfolk*. Mr. *Patten* gave an Account of the several Marches of the Rebels, and how they seiz'd of several of his Majesty's Subjects, made them Prisoners at *Penrith*, and seiz'd Arms at *Kelsoe* and *Lancaster*; but he declar'd, he never saw the Prisoner at any Attack, during the Action at *Preston*, nor in Company with any of the Rebels, before the Prisoner and he were order'd for *Wigan*, under the Guard of Dragoons, in order to be brought up to *London*. Mr. *Patten* own'd indeed, that he supp'd and din'd with

with Mr. *Howard* several Times; but he could not call to mind, he ever heard him enter into any Discourse relating to their Affairs, but look'd upon him to be under Concern, and pensive. The Servant-maid at *Lancaster* said, she saw his Name written upon the Door by Mr. *Tunstal*, where he should lie; but she could not be positive, that the Prisoner at the Bar was the Person. The Horseler at the *Py'd Bull* at *Preston* said, *That he had Horses in the Stable which were called Mr.* Howard's; *but could not say, he ever saw the Master.* Another Woman at *Preston* said, that a Gentleman came to her, and ask'd, if she had a Lodging for two Gentlemen? She answered, that she could spare one Bed; but if they were Rebels, they should not have it; upon which the Gentlemen said, No, they were Country Gentlemen; that he lodg'd there, and went often in and out; but she never saw him among the Rebels. Upon the whole, after a short Stay, the Jury acquitted him. He paid his Fees, and was presently discharged.

After this Trial, which was the last this Summer, the Court adjourned to the 26*th* of *July*; and from thence, by other Adjournments, to a longer Time; which we shall at present leave, to speak of those, who, of this Number try'd, were soon after convicted.

The first of these, was Colonel *Henry Oxburgh*, who, the *Wednesday* ensuing his Trial, having been brought to *Westminster* to receive Sentence, a Rule of Court was then made, for his Execution on *Monday* following; during which Time, he drew up a Petition, setting forth, That he was a Gentleman, who, as well by his Religion, as by other Ties, had been train'd

up

up in an Affection to King *James*'s Family. That being in *London* when the Oaths were, by ſpecial Order, under a general Adminiſtration, and having truly a ſcrupulous Conſcience, he remov'd himſelf, and went toward the *North*, where he was unfortunately perſuaded into the Rebellion; humbly imploring his Majeſty's gracious Clemency; for which he would, during the reſt of his Life, become the moſt obedient of Subjects. But this, as far as ever could be learnt, never reach'd the King's Hands.

After Sentence, whilſt he remain'd in the *Condemn'd-Hold*, he wholly gave himſelf up to Devotion, and fitting himſelf for another World, and after his Way of Worſhip, which was that of the *Romiſh* Church, appear'd truly penitent for the Sins of his paſt Life; for during this Time, he is ſaid to have refuſed all manner of Suſtenance but Bread and Water, and ſhew'd a very ſteddy and compos'd Behaviour. On the Day of his Execution, (*viz.* Monday, *May* 14.) he paſs'd to Execution in a very becoming Manner, and kept in conſtant Prayer till he came to *Tyburn*; where he ſaluted the Spectators, and after a ſhort Space, deliver'd the following Paper to the Sheriff of *Middleſex*.

A Copy of the Paper delivered to the Sheriff of London, *by Colonel* Henry Oxburgh.

'CUſtom has made it almoſt neceſſary for 'Perſons in my Circumſtances, to ſay 'or leave ſomewhat by their laſt Words, de-'claring their Sentiments, with relation to 'what they die for. In Compliance with which, 'I have thought fit to make the following De-'claration: In the firſt Place, I declare I die

'a

'a Member of the holy *Roman-Catholick* Church,
'tho' a very unworthy one; and I desire all the
'Members of that Communion, to assist my
'Soul with their charitable Prayers. I declare
'my self in Charity with all the World, and
'do from my Soul forgive all my Enemies, and
'all others, who have any Ways injured or done
'me wrong; and particularly, I forgive all those,
'who have promoted my Death by malicious
'Misrepresentations, or otherwise, and earnest-
'ly beg God to forgive them, and grant them
'the same Blessings I desire for my own Soul.
'I likewise ask Pardon of all such as I have of-
'fended.

'It has been said, that the *Catholicks*, who
'were taken at *Preston*, engaged in that Affair,
'in View only of setting a *Catholick* King on
'the Throne, and re-establishing the *Catholick*
'Religion in *England*; but that is not the only
'Calumny charged on them. I declare for my
'own particular, That if King *James* III. had
'been a *Protestant*, I should think my self ob-
'lig'd to pay him the same Duty, and do him
'the same Service, as if a *Catholick*. Nor do I
'know any *Catholick* that is not of the same
'Principle; for I never could find, that either
'by the Laws of God, or the ancient Constitu-
'tion of the Nation, Difference of Religion in
'the Prince made any Change in the Allegi-
'ance of the Subject.

'I might have hoped, from the great Character
'Mr. *Wills* gave me at *Preston*, (when I treat-
'ed with him for a Surrender) of the Clemency
'of the Prince now on the Throne, (to which,
'he said, we could not better entitle our selves,
'than by an early Submission) that such as
'surrender'd themselves Prisoners at Discre-

'tion on that Prospect, would have met with more Lenity than I have experienc'd; and I believe *England* is the only Country in *Europe*, where Prisoners at Discretion are not understood to have their Lives saved.

'I pray God of his infinite Goodness restore the Nation to its former Happiness, by extinguishing all unhappy Divisions, that all Animosities and Feuds may be buried, and no other Emulation remain among the Subjects of *Great Britain*, but who shall be most zealous in advancing the Glory of God, and the true Interest of the Nation.

May 14. 1716.

Henry Oxburgh.

After which, he apply'd himself again to his Devotion, which having finish'd, he toss'd the Book he made Use of to a Friend, and having given somewhat to the Executioner, he did his Office. His Body was cut down, and quartered, and afterwards interr'd, but his Head was affix'd the Day following on *Temple-Bar*.

The following Letter was wrote by the Colonel the Day before his Execution, in Answer to one he had received from Mr. *Gascoigne*.

I Cannot express the Satisfaction, my dear Gascoigne, *which your Letter gives me; it is most Christian and edifying: God of his infinite Goodness give me the Grace to profit by it. Oh! How wonderful is God in all his Works! How often have you and I look'd upon our coming into* Newgate, *as the greatest Misfortune of our Lives; and yet, if we make the right Use of it, our Redeemer will make it the Means of our eternal Happiness.*

I

I have more Reason than any, to dread the fatal Moment, having past a long Life in the greatest Sins, and having never done a good Action; but with all this, I bless my God, I have not the least Despair. I am so sensible of the Goodness of my God, and his infinite Love and Charity to Man, that I confidently hope, in his Mercy, he will give me a true Sorrow for my Sins, and a sincere Love of him; and that he will receive me out of this Vale of Misery into the Arms of his Mercy.

Whilst I remain here, if my unworthy Prayers can avail, you are sure of them, and I earnestly beg yours. I heartily ask your Pardon, dear Dick, *if I have at any Time given you any Offence; I was but too apt to commit Faults, but indeed I cannot charge my self it was done designedly, for I always loved you well.*

Once more I beg your Prayers; I commend you to my Saviour Jesus, by whose Merit you and I expect eternal Happiness: And I earnestly beg the Divine Majesty, that he may give you his Grace to live and die as becomes a true Child of God, that he may give you an untired Patience, Submission, and Conformity to his holy Will, with a firm Confidence in his Mercy; and that you and I may in the heavenly Choir of the most High, sing his Praises to all Eternity. Adieu, dear Dick. *I am*

Your Faithful Friend and Servant,

Sunday, 11 a Clock.

Henry Oxburgh.

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An Account of the Behaviour, and Execution of Mr. Richard Gascoigne.

MR. *Gascoigne* having been convicted the 17*th* of *May*, a Rule of Court was made the next Day, for his Execution on *Friday* the 25*th*. During his Imprisonment after Sentence, he seem'd to have given up all Manner of worldly Thoughts, or Hopes of having his Life spar'd by the Government; tho' there were several Methods and Endeavours used to that End, yet 'tis certain, he did not appear to put any Confidence in them; for though he own'd, Life would have been welcome; yet he hardly thought it worth his while to lose one Moment of that Time, which should be employ'd to obtain Salvation, in Pursuit of it; and therefore gave himself wholly up to Prayer and Meditation, which, in his Way as a *Roman* Catholick, must be acknowledged to be very commendable: And, among other Instances of his Endeavours to pacify offended Heaven, he made it his Desire to those few Friends, who were permitted to see him, to join with him in Prayer for the Forgiveness of his many and heinous Offences. Nor did he once go out of his Chamber into the *Press-yard*, tho' he had the Liberty of doing it, from the Time he was first arraigned. The two following Pieces may shew his Submission and Resignation under Sentence of Death; the first to his Mother, and the other to a Person of Eminence of the same Persuasion, both the Day before his Execution.

My

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My most Honoured Dear Mother,

I Received this Day a Packet from you, with a Printed Paper, setting forth what that Man is, and was; God Almighty forgive him, as well as many others, who have injured me. It will be no News to you, to know my State and Condition, in respect to this World. Before you receive this, I trust, in the Merits of my Redeemer, that he will be merciful to me; and as my being drove into the Condition, in which I have been for some Months past, has been the Finger of Providence; so I hope it has been for the Salvation of my Soul. All I can entreat of you is, to be comforted, and think that our Time in this World is but short to those, who are most likely to live; and I hope, and beg of my Saviour Jesus, that we may meet all in Glory.

I beg my dearest Mother's Pardon, for all the Injuries I have done you, and the Uneasinesses I have given you, both in Mind and Fortune; and I hope my dearest Sisters will forgive me all the Prejudices I have done them, by prevailing on your Tenderness to me, to obtain large Sums of Money, which I ask God's Pardon for spending, and which might prejudice their Establishment in this nasty World, which I hope they will not think of much; but put their Confidence in the Great God, and think of an eternal Settlement, which is only worth our Consideration.

I beg all your Prayers, and those of my Friends; and putting my Trust in the infinite Mercies of God, and relying upon all your Interests with him and his Saints; and with my hearty Service to my dearest dear Sisters, whom I heartily love, and to my dearest Nephew, and all our Friends; I remain, and shall be eternally, and for the last Time I shall

ever say so in this World, My dearest dear Mother,

Your most Dutiful,

And most Obedient Son, *&c.*

Thursday.

P. S. My Time is precious; you will see my Paper.

Dear Sir,

I Cannot leave the World without some Tokens of Gratitude, for the many and undeserved Favours which I have received from you. Therefore I send this by the Hands of this Reverend Father, with my Prayers to the Divine Being, that he will shower down such Blessings upon you, in his good Time, as may return the many good Offices you have done me sevenfold. What you have done for the Support of my Body under a crazy State, and the Wants that are generally attendant upon Prisoners, divested of all Necessaries of Life, requires more Acknowledgments than I am capable of paying; but the Care you have taken in making Provision for the Welfare of my poor and immortal Soul, by sending this holy Man, to assist me with his Prayers and Advice, is beyond Expression. 'Tis to this Act of Compassion, that I owe the Recovery of my self from a State of Perdition, than which nothing could have been more ruinous and miserable. To this, that I am rescued out of the Jaws of eternal Death, and can say with the blessed Apostle, O Death! Where is thy Sting? O Grave! Where is thy Victory? Nor can I leave the World without due Acts of Acknowledgment for so endearing, so invaluable a Favour.

Be

Be pleased then to accept this last Testimony of Gratitude, which it is not in Words to express; and to believe, that I am ready to pass through the Vale of Death with all Cheerfulness, being well assured of eternal Bliss and Salvation, through the Merits of Christ Jesus *our Common Saviour, and the Intercession of the blessed Virgin, and of Saints and Angels, with him that sitteth on the Throne, and will at the last Day judge the World in Righteousness.*

I have nothing more than to desire your, and all good Catholicks Prayers; and to take Care, that the Paper inclos'd in this, a Copy of which I intend, God willing, to give the Sheriff at the Place of Execution, may be made publick, as I have written it; and ask leave to subscribe,

Dear Sir,

Your Dying Friend,

And most Humble Servant,

R. GASCOIGNE.

On *Friday* the 25*th* of *May*, when the Sheriff's Officers came to demand him at the usual Hour, he appear'd no Ways daunted, but received the Message with such a composed Countenance, as shew'd a due Preparation for Death; and after his Fetters were knock'd off, he took them up and kiss'd them. This done, he took a solemn Farewel of all his Friends in the *Press-Yard*, and was conducted to the Sledge, in which he sat with his Hat off, and his Eyes fix'd on *Drexelius* on *Eternity*, during his Passage from *Newgate* to *Tyburn*.

Upon his Arrival at the fatal Tree, before he went up in the Cart, he took off a handsome long Perriwig, which he wore, and gave it

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to a Friend, who put him on a Night-Cap; and being mounted, after kissing the Gallows, and offering up his Devotions in his own Way, he addressed himself to the Spectators, and told them: *He was not ashamed of suffering the ignominious and terrible Death he was to undergo, since he trusted he should thereby make his Peace with an incensed Deity, whom he had many Ways heinously offended.* To this he added, *That he thought himself obliged, before his Passage out of this World, to declare, that as to that Part of the Evidence at his Trial, which rendred the Dutchess of* Ormond *suspected of knowing the Secret for which he died, it was utterly false; and that he was heartily sorry for being the Occasion of the Liberty that was taken, by licentious Tongues, of censuring her Grace's Conduct. That as to the Lord* Lansdown, *and Sir* William Wyndham, *both whose Names were made Use of at his Trial, he had justified them in a Paper, which he would leave with the Sheriff; and as for his Religion, he died in the Faith of a* Roman, *and desir'd the Prayers of all good Christians, for the Welfare of his immortal Soul.* Then he turned himself to the Sheriff, and delivered the Paper, which he desired him to make publick without Alterations. After this, he address'd himself to God in Prayer by himself, refusing to join with the Ordinary, who attended to assist him in his Devotions. Then he put the Rope about his Neck; and having saluted two Gentlemen that sat upon the Hearse that came for his Body, he pull'd it off again, to pray a second Time: When rising, he plac'd the Noose on again; and having given the Executioner some Money, he made the Signal for the Cart to drive away, and was turn'd off.

'Twas

'Twas observable, that he threw himself out of the Cart with great Force, and as he hung, struck himself three Blows on the Stomach, after which he folded his Arms, and never stirrid more. A young Child was likewise brought out of a Coach by the Executioner, to put her Hand in his as he was hanging (the Reason for so doing is not known); and after he was quarter'd, according to Sentence the Quarters were delivered to an Undertaker to be interr'd, which was done with all Decency.

A Copy of the Paper delivered to the Sheriff of London, *by* Richard Gascoigne.

'I Take it to be my Duty to leave this Paper behind me, to refute those false Accusations and Calumnies, that have been designedly spread by People, who, I am afraid, took Pains to procure unhappy Wretches to confirm them.

'In the first Place, I declare I die an unworthy Member of the holy, Catholick, Apostolick, *Roman* Church, and do acknowledge my self to be the greatest of Sinners; but, blessed be God, I have a firm Confidence in the Sufferings of my Lord and Saviour Jesus Christ, by whose Merits I hope I shall be saved.

'I from the Bottom of my Heart forgive all those that were my Enemies and Persecutors; and hope Almighty God in his great Goodness, (and I beseech him to do it, as heartily as I beg Pardon for my own Sins) will pardon them, and give them Grace to repent.

'And

'And I earnestly beg Pardon of all those 'whom I have any Ways offended or injured, 'and lament that it is not in my Power to 'make them Reparation; but as they expect 'to be forgiven, I hope they will do so to me. 'I also beg Pardon of all those whom I have dis-'edified by my Life or Conversation.

'That I have had an uncommon Ardour, or 'Zeal in my Duty and Loyalty for my most 'injur'd and Royal Sovereign King *James* the 'Third, I own at my Death, as I did to every 'one that knew me whilst I lived; and I af-'firm, that it was not only on the Account of 'his being a *Roman* Catholick, or any worldly 'Views, but from a true Sense of my Duty, as 'I took my self to be bound by the Laws of 'God and my Country; and as his succeeding 'to the Throne of his Ancestors, would only 'make these Three Kingdoms happy; and 'from impartial Accounts of his Royal Person 'and Qualities, which make him one of the 'most meriting Princes in the World.

'My Loyalty descended to me from my An-'cestors, my Father and Grandfather having 'had the Honour to be sacrificed in doing their 'Duty to their Kings, *Charles* I. and *James* II.

'I think it incumbent on me to do Justice 'to a * Gentleman, whose Name I was sorry 'to hear mentioned at my Trial; which surely 'was irregular and unprecedented, to give E-'vidence of any Treason that had no relation 'to what I was indicted of. I declare in the 'Presence of God, I never saw him but twice, 'and at those Times, I think, there was not a 'Word

* Sir *William Wyndham.*

'Word talk'd of Principle or Party; and I de-
'clare, in the ſame ſolemn Manner, I never
'knew any of his Meaſures or Deſigns, or ever
'had any Intimacy of any kind with him;
'and declare, that what was ſworn at the
'Council, and at my Trial, was falſe, in rela-
'tion to him.

'And I know a great Man ſhould ſay, I was
'intimate with a * Lord in the *Tower*. I de-
'clare, I never ſpoke to him, nor ſaw his Hand-
'Writing; nor, to my Knowledge, was I ever
'under the ſame Roof with him.

'Nor was I ever Agent, or employ'd by any
'Perſon in my Life, (as was ſuggeſted at my
'Trial) in any politick Deſign; nor did I e-
'ver carry a Letter, or was entruſted by one
'great Man to another; nor did I ever know
'of any concerted Meaſures to reſtore my Royal
'Maſter in my Life, more than what was talk'd
'in Publick, and in the Papers; nor, as I ex-
'pect Mercy, did I directly nor indirectly know
'any thing of the Arms that were ſeized at *Bath*,
'directed to *R. G.* as was ſaid at my Trial.

'And as to Mr. *Calderwood*'s Evidence againſt
'me, of my being in the Market-place on *Satur-*
'*day* in the Afternoon, and that he ſaw me
'there: To my Knowledge, I had not been
'there until Seven a Clock at Night, when he
'could not ſee me; and if he did, not with
'my Sword drawn; his Evidence was entirely
'falſe: And he ſent me Word two Days before
'my Trial, *That he could not ſwear any thing a-*
'*gainſt me whatever.* And he ſaid, I was in the
'Council of War: I never (ſo far from being

'in

* Lord *Lanſdown.*

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'in it) knew the House it was held in; nor 'did I know there was one held.

'The Evidence of the Footman *Walmsly*, was 'as false; he swearing me drinking of *Brandy* 'with *Excisemen* six Times a *Saturday*, in the 'same Market Place.

'These are the two Men that swore me out 'of my Life; I forgive them with all my Heart, 'and recommend to them to repent.

'And as I have, upon the Words of a dying 'Man, declared all these Truths, in order to 'caution People not to believe Reports, and to 'do all the Justice I am capable of doing; so 'now let me recommend to all People, to think 'of their Duties to God and their Country, and 'to heal all Divisions; and exhort them to 'think of the Means of uniting and reconciling 'all their Interests, and unite in the only 'Measure that can render them happy; which 'that they may do, I beg of God Almighty to 'direct 'em, that they may compass it.

'I bless my God, who has given me Grace 'patiently to submit to all the Injuries that 'have been done me, as also for enabling me 'to resist the many Temptations I have had fre-'quently, in relation to a Gentleman, upon 'whose Account, I presume, they have taken 'my Life, because I would not concur to take 'his; but God forgive them, I do heartily.

'And I humbly beg the Prayers of all good 'Christians.

May 25. 1716.

Rich. Gascoigne.

An

An Account of the Execution of William Paul, *Clergyman, and* John Hall, *Esq; who were Executed for High Treason,* July *the* 13*th*, 1716.

THE first of these Gentlemen, *William Paul*, Clerk, (who liv'd and dy'd a Batchelor) was the Son of *John Paul*, of *Little Ashby*, near *Lutterworth*, in the County of *Leicester*, lately deceas'd; his Mother was Daughter to Mr. *Barfoot* of *Street-fields*, in *Warwickshire*: They had a Freehold Estate at the Place aforesaid, of about Sixty or Seventy Pounds *per Ann.* lived in good Repute, and had Five Children, of which, *William* was eldest, and born at *Ashby* aforesaid, about the Year 1678. brought up at School the greatest Part of his Time, by the Reverend Mr. *Thomas Seagrave*, Rector of *Lutterworth* in *Leicestershire*. About the Year 1697, he removed to a School at *Rugby* in *Warwickshire*, and remained there under the Care of Mr. *Holyoak*, Master thereof, for near two Years; and from thence he went to *Cambridge*, and was admitted into St. *John's* College, about *May*, 1698. under Mr. *John Harris*, Fellow of the same. He was at first a Sizer, and then made Scholar; soon after which, his Tutor died; and he, among other Pupils, was turn'd over (as they say in *Cambridge*) to Mr. *Edmundson* and *Lambert*: He took his Batchelor of Arts Degree 1702, and soon after went into Orders under ——

He was Curate of *Carlton Curlieu*, near *Harborough*, *Leicestershire*, and at the same Time Chaplain to Sir *Geoffry Palmer*. From thence he went to *Tamworth* in *Staffordshire*, and was Curate and Usher at the Free-School there:

He

He went from thence to *Nun-Eaton* in *Warwickshire*, and was Curate to Mr. *Foxcraft*: From thence he remov'd, being presented to the Vicarage of *Orton on the Hill, Leicestershire*, by the late Lord Bishop of *Oxon*. The Village is scituate in the South-West Corner of the County, both in the Deanery and Hundred of *Sparkenhoe*: It is valued in the King's Book at Six Pounds Twelve Shillings and Six-pence; and the improved Rents are Fifty or Sixty Pounds *per Annum*.

He was Instituted into the aforesaid Vicarage, by his Grace the present Lord Arch-Bishop of *Canterbury*, then Bishop of *Lincoln*, on the 5*th* Day of *May*, 1709. To qualify himself for which, he took the usual Oaths to Queen *Anne*, and abjured the Pretender.

He went down with *Gascoigne*, and some others that he would not name, to meet the Rebels at *Preston*, was selz'd on the Way by one commonly called Major *Bradshaw*, and Mr. *Matthews* a Clergyman, and set at Liberty again by one Colonel *Noel*, a Justice of the Peace in that Country; but went after to *Preston*, read Prayers to the Rebels three Days together, and pray'd for the *Pretender*, (in the Parish Church) by the Name of King *James*. But just before King *George*'s Troops invested that Town, he made the best of his Way out; and just calling in his own Country by the Way, he came to *London*; and being disguised in coloured Cloaths, laced Hat, a long Wig, and a Sword by his Side, he was accidentally met near *Montague* House, by *Thomas Bird*, Esq; a Justice of the Peace for the County of *Leicester*, who knew him, and took him Prisoner, *December* the 12*th*, 1715. He made no Resistance,

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ance, tho' a lusty Man; but suffer'd himself to be carry'd to the Duke of *Devonshire*'s; then before the Lord *Townshend*, his Majesty's Principal Secretary of State, who, after a short Examination, without any Confession, first committed him to the Custody of a Messenger, and about fourteen Days after, sent him to *Newgate*.

Upon the 31st of *May*, he was arraign'd at *Westminster*, as has been said, and pleaded *Not Guilty* to the Indictment that was found against him; and being return'd to *Newgate*, he sent the following Letter to a Friend:

Good Sir,

IF Time will permit, I desire your Company for one Minute upon the Receipt of this, and you will for ever oblige,

Yours to Command,

William Paul.

Upon his Friend's Arrival at *Newgate*, *Paul* the Prisoner said: *What must I do? I am this Day Arraigned, and have Pleaded* Not Guilty; *but that's little to the Purpose*; and then continu'd, with Tears in his Eyes, *There is too much will be proved against me.* Upon which his Friend reply'd: *If this be true, and you are already condemned in your own Conscience, to what Purpose do you stand your Trial? You have sufficiently provok'd the Government already, and will exasperate it more, by denying that, which, by your own Confession, will be prov'd against you; but, however, do as you please, I will perswade you to nothing; but in my Opinion, the best Way is, to confess your Fault, ask Pardon, and throw your self upon*

upon the King's Mercy. Upon which he said: *Mr.* Darnel, *my Council, and Mr.* Taylor, *my Sollicitor, have told me the same; and I am fully resolv'd to follow their Advice, being unwilling to be Hang'd, if I can possibly help it; but I cannot tell what Method to take, because I have already pleaded,* Not Guilty. His Friend told him then, he must Petition the Judges. And he answer'd, *I know not what Method to do it in; will you assist me in this weighty Affair? My Thoughts are confused, and I am ignorant at best, in things of this Nature.* To which his Friend answer'd, that he would assist him; and so soon as possible, two Petitions were drawn, one to the Lord Chief Justice *King*, the other to his Majesty; both which he heartily approv'd, and resolv'd to present.

To the Right Honourable Sir *Peter King*, Lord Chief Justice, *&c.* The humble Petition of *William Paul*, Clerk,

Sheweth,

THAT *your Petitioner, through the Grace of God, having a deeper Insight into, and the more lively Sense of the Crimes and Offences by him committed, doth now at last detest and abhor (from the Bottom of his Soul) the late unnatural Rebellion, begs Pardon of God, King* George, *and his Native Country, against all which he has highly offended; sincerely repents, declares his unfeigned and hearty Sorrow, in having been instrumental toward encouraging and promoting the same. He owns himself to be highly culpable in pleading* Not Guilty *at his Arraignment; prays leave to retract that Plea; acknowledges the Indictment preferred and found against him, to be just and true; implores, and hopes your Lordships, from innate Goodness,*

and

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and Christian Charity, will be pleas'd to recommend him to his most sacred Majesty, as a sincere Penitent, and, though unworthy, an Object of Mercy; which,

As bound in Duty, he your Petitioner shall for ever Pray.

The OTHER,

To His most Sacred Majesty, *George*, by the Grace of God, King of *Great Britain*, &c. The humble Petition of *William Paul*, Clerk,

Sheweth,

THAT your Petitioner, now a Prisoner in Newgate, *for the late unnatural Rebellion against your Majesty, which he detests and abhors; humbly begs leave, in all Sorrow of Heart, to acknowledge his great and heinous Offence; and from the Bottom of his Soul, asks Pardon of God, your most sacred Majesty, and the Church and Nation; all which he owns thereby to have highly offended. And therefore, in all Submission, prostrates himself at your sacred Feet, begs for Mercy, promises and vows all Loyalty and Obedience to your Majesty's Person and Government for the Time to come, and that no seditious Humour shall stir, or move him from his Duty: And therefore humbly hopes, your Majesty's Piety and Goodness will pardon past Offences and Crimes by him committed, and accept his sincere and hearty Repentance.*

And from the true Affection of his Heart, (as in Duty bound) shall be poured out daily and devout Prayers to the God of Heaven, for your Majesty's long Life, happy Reign, prosperous Estate, and Royal Posterity in this World, and for ever and ever.

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The Day he receiv'd Sentence, he wrote again to his Friend, as follows:

Good Sir,

I Desire your Company this Morning: I am under Sentence of Death; pray, Sir, come as soon as you can. I am

Nine of the Clock, Saturday. *Yours to Command,*

William Paul.

When his Friend came to him in the Afternoon, he found him in a Hurry and great Confusion, said, *He hop'd he would go to the Arch-Bishop of* Canterbury, *and do what he could to save his Life; for this was the Time to try his Friends; and that several had told him, he should certainly be Hang'd, because he was a Clergyman.* His Friend told him, 'twas an invidious Reflection thrown upon the Government, by such as wish'd the Ruine of that, as effectually as they had compassed his own; and therefore bid him give no Regard to such wicked Stories, nor have any thing to do with the Authors of them, which, he said, he supposed were those *Non-Jurors* which came daily to see him.

Upon the 28*th* of *June*, he wrote again to his Friend.

Good Sir,

I Desire you to deliver the Enclosed, and you will oblige,

Yours to Command,

William Paul.

Read,

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Read, and then seal it up. It was directed, *To his Grace the Arch-Bishop of* Canterbury, and ran thus:

My Lord,

MY Crime for being among the Rebels at *Preston*, I acknowledge, and am heartily sorry, as I own'd at my Trial. I humbly desire your Grace to intercede with his Majesty to beg my Life; which, if spar'd, I promise, with a sincere Resolution, to spend the Remainder of it in Prayers for his sacred Majesty, and illustrious Family. I am wholly destitute of Friends to implore Mercy for me; therefore I do not question but your generous Temper and Compassion will move you to assist me; One that had once the Honour to be instituted into a Living in your Diocese of *Lincoln* by your Grace. I beg leave to assure your Lordship, you cannot bestow your Favour on any one that will be more penitent, than he that is, with all Obedience,

Your Lordship's
Most Humble Servant,
William Paul.

To which his Friend sent him the following Answer:

June the 30*th.*

SIR,

ACcording to your Desire, Yesterday I deliver'd your Letter to the Archbishop of *Canterbury*, who receiv'd it coldly, and ask'd me, *What you would have him do?* I answer'd, if he pleas'd but to read the Contents of yours, they would throughly inform him; upon which

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he look'd upon the Beginning, and ſaid, *He did not care to meddle in the Matter; and was afraid, your preſent ſeeming Sorrow proceeded more from Fear of Puniſhment, than true Repentance; and that if at Liberty, you would be much the ſame Man as you was before.*

I told his Grace, I hop'd not; for you promis'd otherwiſe. Upon which he reply'd, *He ſhould ſee Lord* Townſhend *in an Hour's Time, and may be he might acquaint him with it.*

Afterward I met with a Gentleman belonging to the Biſhop of *London*, who told me, *That he did not believe any Petition had been delivered to his Lordſhip upon your Account; but that, on the contrary, 'twas generally ſaid in the Family, had you been try'd, it would have been proved to your Face, that you did preſs your Pariſhioners, upon Pain of* Damnation, *to own, acknowledge, and aſſiſt the* Pretender, *who was their only true and lawful* King. And therefore, as this ſeems to be credited, conclude.

Another Perſon then preſent, aſſured me for Truth, that you did neither deliver a Petition to Sir *Peter King* in Court, nor deſire his Lordſhip to preſent one to his Majeſty, to give you your Life. At which (if true) I am extreamly ſurpriz'd, and wonder that you ſhould deſire that of another, you neglect ſo your ſelf; and can think no other, but that ſuch Dealing (which I am unwilling to believe) is unkind to your Friend, but more diſſerviceable and unfaithful to your ſelf; for if you heard with me what is generally ſaid without Doors concerning your Condition, you could not but think the greateſt Sorrow, moſt ſincere Repentance, a free and open Confeſſion of your Faults, Promiſe of Amendment,

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mendment, and unwearied Application, little enough to prevent Execution.

I would not have you think, I write this either to aggravate or inflame the Matter, but out of pure Compaſſion, and to lay the real State of the Caſe before you, that ſo you might make a Judgment for your ſelf.

Your immediate Anſwer to theſe Particulars, will oblige him that prays for your happy Deliverance, and is with all Sincerity,

Yours, &c.

The ANSWER.

June 30. 1716.

Dear Sir,

I Am ſorry I ſhall loſe ſo good a Friend as I expected the Biſhop of *Canterbury* would be: I ſent my Petition to him, by the Order of his Chaplain, into the Country. A Petition was deliver'd to the Biſhop of *London*'s own Hand, and another to the Biſhop of *Lincoln*, with a Petition to his Majeſty. Mr. *Taylor*, my Sollicitor, deliver'd my Petition to Sir *Peter King*.

I hope you will not think I impoſe upon my Friend, but beg with all Sincerity, you will believe what I ſay. If ever I preach'd up Rebellion, or adviſ'd my Pariſhioners to take up Arms, I call God to witneſs, I will willingly ſuffer this Day; or ever told them, the *Pretender* was their lawful King. I have a Certificate handed by moſt of the Pariſh, which I have juſt now ſent to the Archbiſhop, teſtifying the ſame.

I beg you will let me ſee you this Afternoon, and you'll for ever oblige

Your Friend and Brother,

William Paul.

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Accordingly his Friend went, and he ask'd him, what he thought of his Condition; who freely told him, every *Whig* to a Man, except himself, said, *he ought to be Hang'd*; and he did not know one *Tory*, that either wish'd or endeavour'd to save him; upon which he said, *He had writ to all his Friends in the Country over and over, and not one was so kind as to send him an Answer, or endeavour to help him from that Place of Torments*; adding, *I know you are acquainted with Lords* ———, *see whether you can prevail with them to intercede for my Life, and that either by Word of Mouth, or by Way of Petition, as they think proper; and I will send one inclos'd to Morrow Morning at furthest:* Which was *Sunday, July* the 1*st*; and accordingly it came with a Letter in these Words:

Dear Sir,

WHAT Words to put the Petition in, I can't tell; if this be wanting in any thing, if you please to alter it, as their Lordships think fit; if they'll do me the Honour to present it, and beg my Life, they shall find me an Object worthy of their Mercy and Compassion. I leave the whole to you, to talk with their Lordships, as you please; not doubting but you will use your utmost Endeavours for your former Friend. I am

Yours,
W. P.

I desire you to write it in a better Hand.

The Petition was in these Words, and likewise written with his own Hand.

WE

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WE your Majesty's most humble Petitioners in the behalf of William Paul, *Clerk, now a Prisoner in* Newgate, *and under Sentence of Death, for being unfortunately two Days among the Rebels at* Preston, *whom he left before your Majesty's Forces came up. He being wholly destitute of Friends, makes us, out of Christian Charity, presume upon your Majesty's Goodness, to intercede for his Life; which if spared, we are assured, will be employ'd in begging the Almighty, to pour down the abundance of his Blessings on your Royal Person, and Illustrious Family, and the Good of these Kingdoms.*

And your Petitioners, *&c.*

The next Day his Friend went, as he desired, but was unsuccessful as before; and therefore did not deliver the ungrateful Answer; and he being otherwise advis'd by Nonjuring Clergymen, did not think fit to trouble this his Friend any more.

These Letters and Petitions having produced nothing, and the fatal Day drawing near, Mr. *Paul*, on the 9*th* of *July*, wrote the two following Letters to the Lord Archbishop of *Canterbury*.

May it please your Grace,

AT my Trial I thought I had a very good Plea; but was advised by the Lawyers, as the surest Way to obtain Mercy, to plead Guilty; upon which I threw my self wholly upon the King's Mercy. What Confession the Court would have from me, I can't tell; I am sure your Grace would not have me for the World speak more than I know. I declare be-

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fore Almighty God, upon the Word of a Clergyman, I never brought any Letter out of *Preſton*, or went to any one Gentleman, or ſpoke the leaſt thing that tended that Way, *viz.* to Rebellion, but came into my own Country as faſt as I could, and ſo to *London*, where I was ſeiz'd, and ſent to *Newgate*. I humbly deſire your Grace once more to believe me, and to uſe your utmoſt Endeavours to ſave a poor Clergyman's Life. If it will not be granted to ſpend the Remainder of it in *England*, I beg you will be pleaſed to ſend me to the Plantations, or any where rather than *Tyburn*. I humbly deſire your Grace, to conſider your poor afflicted Servant, and take him from this naſty Priſon.

My Lord,

I am your Lordſhip's

Moſt Humble, and moſt

Obedient Servant,

William Paul.

My Lord, I never did, ſince I was in Newgate, *pray for the* Pretender *by any Name or Title.*

My Lord,

I Beg Pardon for troubling your Grace; but preſuming upon your Goodneſs, once again humbly deſire you to interceed with his Royal Highneſs for Mercy. The dead Warrant is come down for Execution *Friday* next: What ill Steps I have made in my Life paſt, I hope Almighty God will forgive me; but the things that are laid to my Charge, *viz. Preaching up Rebellion, adviſing my Pariſhioners to take up Arms,* and

and that I preach'd ſeveral ſeditious Sermons; all which are falſe upon the Word of a Clergyman, as I have a Certificate to prove, for ſix Years, the Time of my being at *Orton*, handed by moſt of the Pariſh. Another Thing is objected againſt me, *that I was concern'd in ſeveral Conſultations*; but I am innocent and ignorant, I call God to witneſs, of any Deſign that was formed, in any Part of the Kingdom, againſt the Government; and if ever I knew of any Meeting, but where I was unfortunately at *Preſton*, or Conſultation, or ever asked or adviſed any Body to riſe in Rebellion, I am willing to ſuffer.

I deſire your Grace will endeavour to ſave me this Time from that ignominious Death of the *Halter*, and diſpoſe of me in what Part your Lordſhip pleaſeth. If nothing can be done, I humbly deſire your Lordſhip's Bleſſing and Prayers for Patience and Courage in this ſevere Time of Trial. For God's Sake, my Lord, do what lies in your Power to ſave the Life of a poor, afflicted Clergyman; the remaining Part of which ſhall be ſpent in Prayers for your Grace, and all that endeavoured to bring me out of theſe great Troubles.

My Lord,

I am your Lordſhip's

Moſt Humble, and moſt

Obedient Servant,

Newgate,
July 9.

William Paul.

At

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At the same Time he sent the following Letter *to the Right Honourable the Lord Viscount* Townshend.

AT my Trial I pleaded Guilty, throwing my self wholly upon his Majesty for Mercy, to whom I have got a Petition presented to beg my Life, promising with a sincere Resolution, to spend the Remainder of it, if spared, in Prayers for his sacred Majesty and illustrious Family. But, my Lord, I am destitute of Friends to implore Mercy for me; I most humbly intreat your Lordship to intercede for me, trusting to your Goodness, hoping all from you. I beg leave to assure your Lordship, you cannot bestow your Favours on any one that will be more penitent, or pray God more heartily for you, than,

My Lord,

He that is with all Respect,

Your Lordship's most Humble,

And most Obedient Servant,

William Paul.

Mr. *Paul* sent also the following Petition to the Lord Bishop of *Salisbury*.

To the Right Reverend Father in God, the Lord Bishop of *Salisbury*.

The Humble Petition of William Paul, *Clerk*,

Sheweth,

THAT *your Petitioner* (*who had once the Honour to be under your Patronage*) *is now a Prisoner in* Newgate, *under Conviction for being unfortunately at* Preston *amongst the Rebels, whom he left upon the first Opportunity, before the King's Forces came up.* The

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The ill Steps he there made, (which were the Effect of Fear more than Choice) he in all Sorrow of Heart acknowledges, and in all Submiſſion proſtrates himſelf, and begs for Mercy, humbly deſiring your Lordſhip to intercede with his Majeſty for a Life, which, if ſpared, ſhall be wholly employed in begging of the Almighty, to pour down abundance of his Bleſſings on his Royal Perſon, and his Illuſtrious Family, for the Good of theſe Kingdoms, and the Church in particular.

And your Petitioner, as in Duty bound, will ever pray, *&c.*

WILL. PAUL.

But I do not hear, that the Prelate to whom this Petition was Addreſs'd, made any Steps in Favour of Mr. *Paul.*

The 20*th* of *July*, Mr. *Paul* writ the following Letter to Mr. *Patten:*

SIR,

FROM your Letters and Perſwaſions I pleaded Guilty, as being a certain Way, you aſſured me, to ſave my Life. The Dead Warrant is come down for *Friday* next; (a very ſhort Time to prepare for another World) you promiſed I might have my Life ſaved; now is your Time to do Honourably by your Friend, and Juſtice to your ſelf. Let me have your Anſwer by Mr. *Rouſe*, and you will oblige

Your Servant,

Newgate, July 10. 1716. *William Paul.*

On

On the Receipt of this Letter, Mr. *Patten* went to *Newgate* to him; and after ſome Diſcourſe had paſs'd betwixt them, he ſent the following Letter by him to Lord *Townſhend*.

My Lord,

MR. *Patten* was ſo kind to pay me a Viſit in my Affliction, and deſired me, if I knew any thing relating to the Government, I would declare it. My Lord, I ſolemnly declare, I call Almighty God to witneſs, I carried no Letter off from *Preſton*, though I told Mr. *Patten* ſo, which was only a Feint, that I might go off; and if Mr. *Patten* will do me Juſtice, he can tell your Lordſhip how uneaſy I was, when I diſcovered my Raſhneſs. My Lord, I depend ſolely upon your Lordſhip's Goodneſs in this my miſerable Condition. I wiſh, my Lord, I could have my Life ſaved, that I might ſhew to the World, how heartily I am ſorry for all my paſt Errors; and no Man ſhall demonſtrate it more than,

My Lord,

Your Lordſhip's moſt Humble,

And moſt Obedient Servant,

William Paul.

My Lord, Mr. Patten *ſaith, it is an Aggravation to my Crime, that I pray'd in expreſs Terms in* Newgate *for the* Pretender, *by the Name of King* JAMES: *I declare I never did. I once more crave your Lordſhip's kind Aſſiſtance, to procure me my Life.*

Mr.

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Mr. *Patten* carried this Letter to the Lord *Townſhend*, then ſitting in a Committee of Council at the *Cockpit*; but underſtanding there was no Hopes of a Pardon, he return'd to *Newgate* to Mr. *Paul*; and having told him his Mind, Mr. *Paul*, under the greateſt Terror, deſired Mr. *Patten* to carry another Letter to my Lord *Townſhend*, with an humble Requeſt for a Reprieve, which Mr. *Patten* delivered to his Lordſhip, but receiv'd no Anſwer.

There appearing now no Hope for him; he was, together with *John Hall*, the next Day, *viz. Friday*, July 13. drawn on a Sledge from *Newgate* to *Tyburn*; and as he affected to die in his Canonical Habit, ſo it prov'd a very moving Spectacle to the Multitude. Being come to the Place of Execution, they were taken out of the Sledge into a Cart, where they pray'd ſeverally for ſome Time; after which, Mr. *Paul* took out his Speech, and began to read it; but when he came to thoſe Parts of it, which reflected on the Government, there were ſeveral about the Tree, who cry'd out, it was no Time nor Place to vent Treaſon; wherefore he folded up his Speech, and deliver'd it to the Sheriff. The Account given of their Execution by the Ordinary of *Newgate*, we have thought proper to inſert.

An

An Account of their Executions and Behaviour, written by Mr. *Paul Lorrain*, Ordinary of *Newgate*.

WHEREAS *I find an Account was expected from me, concerning the Behaviour of Mr.* William Paul, *and* John Hall, *Esq; who were Executed at* Tyburn, *for High Treason, on* Friday *the* 13th *Instant; about whom many Questions are daily ask'd me: THESE are to satisfy all whom it may concern, that as those Persons did all the while (under their Confinement) decline the giving me any Opportunity of discoursing them, and were unwilling to receive those wholsome Admonitions I offer'd them; so I had not so much to say of them, as might be worth the writing a Paper for them alone, and publishing it by it self; and therefore thought it proper to defer it to this Time and Place, and to impart (in a few Words) what I observ'd concerning them.*

MR. *Paul*, a Clergyman, and of late a Member of the NONJURING CHURCH, otherwise the TRUE, CATHOLICK, NONJURING CHURCH OF *ENGLAND*, (to use his, and Mr. *Hall*'s own Expressions) would never enter into the Verge of Arguing concerning his mistaken Principles; for when I would shew him, how contrary his Actions had been to those plain Precepts, which we have in *Rom.* xiii. 1. *Tit.* iii. 1. 1 *Pet.* ii. 13, *&c.* all the Answer he gave me to this was, *That I took those Texts in one Sense, and he in another.* But inded, it seems by his disloyal Practices, he was as far from having a right Understanding of them, as unwilling to be better inform'd.

When

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When he and Mr. *Hall* were carried to *Tyburn*, as ſoon as they were taken out of the Sledge into the Cart, they deſir'd to have a Miniſter of their own Communion, (as they call'd it) to pray with them, which was granted; and accordingly ſuch a Miniſter (whoever he was, or whence he came, I know not) ſtept into the Cart, and pray'd by them a conſiderable Time, and then ſuddenly went off.

No ſooner had he made his *Exit*, but Mr. *Paul* began to read his Speech; wherein as he was reflecting (moſt unworthily) on the late happy *Revolution*, and the glorious Inſtruments of it, ſparing neither Crown'd Heads, nor the Biſhops and Miniſters that were legally Conſecrated and Ordained ſince that *Revolution*, nor any others that had taken an Oath to it; the ſaid Mr. *Paul* going on at that Rate, he was deſir'd to forbear ſuch unbecoming Expreſſions, not fit to be heard: Upon this he ſtopt, and he and Mr. *Hall* deliver'd each of 'em a Paper to the Sheriff. This done, I went up to pray by them; but Mr. *Paul* being then on his Knees reading a Prayer in Writing, (whether in his own, or another's Hand, I can't tell) I would not diſturb him, but let him go on in his Reading. When he had done, and was got up, I then addreſs'd my ſelf both to him and Mr. *Hall*; telling them, that I was come to do my laſt Duty to their Souls, which I heartily recommended to GOD's Mercy; praying him, that he would be pleas'd to enlighten their dark Minds, and undeceive their deluded Hearts, that they might acknowledge the Truth, renounce their Errors, and ask Pardon of him, (our good and gracious GOD) whom they had greatly offended; and likewiſe of the King,

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King, and these Nations, that they, and those of their Party, had so much disturb'd. And here I advis'd them also to warn the People, to be loyal and truly religious, taking Care not to follow their Steps in Rebellion and unsound Principles, lest they should be brought to such a shameful and untimely Death, as they themselves were now come to: But instead of complying with those my Admonitions, they still persisted tenacious in their Way, endeavouring to justify their Actions to the Standers by; who seem'd to be so far from liking, that they shew'd a great Abhorrence of their wicked Practices and scandalous Speeches.

I did what I could to take off their Thoughts from these, and turn them to better Objects, offering to pray with them; but they were not very desirous I should; neither would they kneel at my Prayers, as they did at their *Nonjuring* Minister's. Upon which I told them, that since they were unwilling to kneel down with me, I would stay till they were ty'd up; which I did, and then pray'd.

When I had begun to pray, I perceiv'd that Mr. *Paul* was affected, and would fain then have kneel'd; but a Person standing by, told him, he could not. As for Mr. *Hall*, he would not at all join in Prayer with me, but all the while turn'd his Back upon me; a thing which no Protestant ever did before on such an Occasion. This obliged me (after I had done praying) to tell him: Mr. *Hall*, *methinks you might have been more serious, and more civil: What Hurt do I do to you, in imploring GOD's Mercy to your Soul? One would think, you might very well have joined with me herein*, &c. Having said this, (to which he made no Reply) and given them both some further Admonitions, and begg'd of GOD,

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GOD, of his infinite Goodneſs through Chriſt, to convert and ſave them, I left them to their Recollection and private Devotion. Then the Cart drawing away, and they being turn'd off, the People gave a mighty Shout, and with loud Acclamations ſaid, *God ſave King* George. To which I ſay, *Amen.*

This is all the Account here to be given of thoſe Malefactors, by me

Paul Lorrain, Ordinary of *Newgate.*

Monday, July 23. 1716.

A True Copy of the Paper delivered to the Sheriff of London, *by* William Paul *a Clergyman, who was Drawn, Hang'd, and Quarter'd at* Tyburn, *for High Treaſon againſt His Majeſty King* GEORGE, *July* 13. 1716.

Good People,

'I Am juſt going to make my Appearance 'in the other World, where I muſt give 'an Account of all the Actions of my paſt 'Life. And tho' I have endeavour'd to make 'my Peace with God, by ſincerely repenting 'of all my Sins; yet foraſmuch as ſeveral of 'them are of a publick Nature, I take it to be 'my Duty to declare here, in the Face of the 'World, my hearty Abhorrence and Deteſta-'tion of them.

'And firſt, I ask Pardon of God, and the 'King, for having violated my Loyalty, by tak-'ing moſt abominable Oaths in Defence of U-'ſurpation, againſt my Lawful Sovereign King '*James* the Third.

'And as I ask Pardon of all Perſons whom I 'have injur'd or offended, ſo I do eſpecially

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'desire Forgiveness of all those whom I have 'scandaliz'd by pleading Guilty. I am sensible, 'that it is a base and dishonourable Action; 'that it is inconsistent with my Duty to the 'King, and an entire Surrender of my Loyalty. 'Humane Frailty, and too great a Desire of 'Life, together with the Perswasions of seve-'ral, who pretended to be my Friends, were 'the Occasion of it. I trust God, of his infinite 'Mercy, upon my sincere Repentance, has for-'given me, and I hope all good Christians will.

'You see, my Countrymen, by my Habit, 'that I die a Son, tho' a very unworthy one, of 'the Church of *England*. But I would not have 'you think, that I am a Member of the Schis-'matical Church, whose Bishops set themselves 'up in Opposition to those orthodox Fathers, 'who were unlawfully and invalidly depriv'd 'by the Prince of *Orange*. I declare, that I re-'nounce that Communion; and that I die a 'dutiful and faithful Member of the Nonjuring 'Church, which has kept it self free from Re-'bellion and Schism, and has preserv'd and 'maintain'd true Orthodox Principles, both as 'to Church and State. And I desire the Cler-'gy, and all Members of the Revolution 'Church, to consider what Bottom they stand 'upon, when their Succession is grounded upon 'an unlawful and invalid Deprivation of Ca-'tholick Bishops; the only Foundation of 'which Deprivation, is a pretended Act of Par-'liament.

'Having ask'd Forgiveness for my self, I 'come now to forgive others. I pardon those 'who, under the Notion of Friendship, per-'suaded me to plead Guilty. I heartily forgive 'all my most inveterate Enemies, especially

'the

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'the Elector of *Hanover*, my Lord *Townshend*, 'and all others, who have been instrumental in 'promoting my Death. *Father, forgive them; 'Lord Jesus, have Mercy upon them, and lay not 'this Sin to their Charge.*

'The next Thing I have to do, *Christian 'Friends*, is to exhort you all to return to your 'Duty. Remember that King *James* the *Third*, 'is your only Rightful Sovereign, by the Laws 'of the Land, and the Constitution of the 'Kingdom; and therefore if you would per-'form the Duty of Justice to him, which is 'due to all Mankind, you are oblig'd in 'Conscience to do all you can, to restore 'him to his Crown. For it is his Right, 'and no Man in the World besides himself 'can lawfully claim a Title to it. And as it is 'your Duty to serve him, so it is your Interest; 'for till he is restor'd, the Nation can never 'be happy. You see what Miseries and Ca-'lamities have befallen these Kingdoms by 'the *Revolution*; and I believe you are now 'convinc'd by woful Experience, that swerving 'from God's Laws, and thereby putting your 'selves out of his Protection, is not the Way 'to secure you from those Evils and Mis-'fortunes, which you are afraid of in this 'World. Before the *Revolution*, you thought 'your Religion, Liberties, and Properties in 'Danger; and I pray you to consider, how 'you have preserv'd them by Rebelling: Are 'they not ten Times more precarious than e-'ver? Who can say, he is certain of his Life 'or Estate, when he considers the Proceedings 'of the present Administration? And as for 'your Religion, is it not evident, that the *Revo-'lution*, instead of keeping out *Popery*, has let

'in *Atheism?* Do not *Heresies* abound every 'Day? And are not the Teachers of *false* Doctrines patroniz'd by the great Men in the 'Government? This shews the Kindness and 'Affection they have for the Church. And, to 'give you another Instance of their Respect 'and Reverence for it, you are now going to 'see a Priest of the Church of *England* mur'der'd for doing his Duty. For it is not me 'they strike at so particularly, but it is thro' 'me that they would wound the Priesthood, 'bring a Disgrace upon the Gown, and a 'Scandal upon my sacred Function. But they 'would do well to remember, that *he who de'spises Christ's* Priests, *despises Christ*; *and he 'who despises him, despises him that sent him.*

'And now, *Beloved*, if you have any Regard 'to your Country, which lies bleeding under 'these dreadful Extremities, bring the King 'to his just and undoubted Right; that is the 'only Way to be freed from these Misfortunes, 'and to secure all those Rights and Privileges 'which are in Danger at present. King *James* 'has promised to protect and defend the Church 'of *England*; he has given his Royal Word, to 'consent to such Laws which you your selves 'shall think necessary to be made for its Pre'servation; and his Majesty is a Prince of that 'Justice, Virtue, and Honour, that you have 'no manner of Reason to doubt the Per'formance of his Royal Promise. He studies 'nothing so much as how to make you all easy 'and happy; and whenever he comes to his 'Kingdom, I doubt not but you will be so.

'I shall be heartily glad, *good People*, if what 'I have said has any Effect upon you, so as to 'be instrumental in making you perform your 'Duty;

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' Duty; it is out of my Power now to do any
' thing more to ſerve the King, than by em-
' ploying ſome of the few Minutes I have to live
' in this World, in praying to Almighty God,
' to ſhower down his Bleſſings, Spiritual and
' Temporal, upon his Head, to protect him and
' reſtore him, to be favourable to his Under-
' taking, to proſper him here, and to reward
' him hereafter. I beſeech the ſame infinite
' Goodneſs, to preſerve and defend the Church
' of *England*, and to reſtore it to all its juſt
' Rights and Privileges. And aſtly, I pray
' God have Mercy upon me, pardon my Sins,
' and receive my Soul into his everlaſting
' Kingdom, that with the Patriarchs, Prophets,
' Apoſtles, and Martyrs, I may praiſe and mag-
' nify him for ever and ever. *Amen.*

' As to my Body, *Brethren*, I have taken no
' manner of Care of it; for I value not the
' barbarous Part of the Sentence, of *being Cut*
' *down, and Quarter'd*; when I am once gone,
' I ſhall be out of the Reach of my Enemies;
' and I wiſh I had Quarters enough to ſend to
' every Pariſh of the Kingdom, to teſtify that
' a Clergyman of the Church of *England* was
' martyr'd for being Loyal to his King.

July 13. 1716.

William Paul.

The SPEECH *of JOHN HALL*, Eſq;

Friends, Brethren, and Countrymen,

' I Am come here to die for the ſake of God,
' my King, and my Country, and I heartily
' rejoice that I am counted worthy of ſo great
' an Honour; for let not any of you think
' that I am come to a ſhameful and ignominious

'End. The Truth and Justice of the Cause 'for which I suffer, makes my Death a Duty, 'a Virtue, and an Honour. Remember that I 'lay down my Life for asserting the Right of 'my only Lawful Sovereign King *James* the 'Third; that I offer my self as a Victim for 'the Liberties and Happiness of my dear 'Country, and my beloved Fellow Subjects; 'that I fall a Sacrifice to Tyranny, Oppression, 'and Usurpation; in short, consider that I 'suffer in Defence of the Commands of God, 'and the Laws and *Hereditary* Constitution of 'the Land; and then know, and be assured, 'that I am not a Traytor, but a Martyr.

'I declare, that I die a true and sincere Mem-'ber of the Church of *England*; but not of 'the Revolution, Schismatical Church, whose 'Bishops have so rebelliously abandoned the 'King, and so shamefully given up the Rights 'of the Church, by submitting to the unlawful, 'invalid Lay Deprivations of the Prince of *O-'range*. The Communion I die in, is that of the 'true Catholick Nonjuring Church of *England*; 'and I pray God to prosper and increase it, 'and to grant, if it be his good Pleasure, that 'it may rise again and flourish.

'I heartily beg Pardon of all whom I have 'in any Manner, and at any Time, injured or 'offended; I do particularly implore Forgive-'ness of God and my King, for having so far 'swerv'd from my Duty, as to comply with 'the Usurpation, in swearing Allegiance to it, 'and acting in publick Posts by the Usurpers 'Commissions, which were void of all Power 'and Authority. God knows my Heart, I did 'this at first thro' Ignorance and Error; but 'after I had recollected my self, and inform'd

'my

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'my Judgment better, I repented, and drew 'my Sword for the King, and now ſubmit my 'ſelf to this violent Death for his ſake. I hear-'tily pray God, my Penitence and my Sufferings 'may attone for my former Crimes; and this 'I beg thro' the Merits, Mediation, and Suffer-'ings of my deareſt Saviour Chriſt Jeſus.

'I do ſincerely forgive all my Enemies, e-'ſpecially thoſe, who have either caus'd or in-'creas'd the Deſtructions in Church or State; 'I pray God have Mercy upon them, and ſpare 'them, becauſe they are the Work of his own 'Hands, and becauſe they are redeem'd with 'his Son's moſt precious Blood. I do particu-'larly forgive, from the Bottom of my Heart, 'the Elector of *Brunſwick*, who murthers me; 'my unjuſt pretended Judges and Jury, who 'convicted and condemned me; Mr. *Paſton*, 'and Mr. *Carnaby*, Evidences who ſwore a-'gainſt me at my Trial; and I do here de-'clare, upon the Words of a dying Man, (and 'all my *Northumberland* Fellow Priſoners can 'teſtify the ſame) that the Evidence they 'gave, was ſo far from being the Truth, the 'whole Truth, and nothing but the Truth, that, 'in relation to my Indictment, they ſwore 'not one true Thing againſt me, but many ab-'ſolute Falſhoods. I pray God forgive them, 'for I am ſure I do.

'Laſtly, I forgive all who had any Hand in 'the Surrender at *Preſton*, for they have ſur-'render'd away my Life, and I would to God 'that were the only bad Conſequence of it; 'but alas, it is too plain, that the Surrenderers 'not only ruin'd many of his Majeſty's brave 'and faithful Subjects, but gave up their King 'and Country into the Bargain; for it was then

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'in their Power to have reſtor'd the King
'with Triumph to his Throne, and thereby to
'have made us a happy People. We had re-
'puls'd our Enemies at every Attack, and were
'ready, willing, and able to have attack'd them
'on our Side; even our common Men were
'brave, couragious, and reſolute On the o-
'ther Hand, theirs were directly the contrary,
'inſomuch that after they had run away from
'our firſt Fire, they could never be brought
'ſo much as to endeavour to ſtand a ſecond.
'This I think my ſelf oblig'd in Juſtice to
'mention, that Mr. *Wills* may not impoſe upon
'the World, as if he and his Troops had
'conquer'd us, and gain'd the Victory; for
'the Truth is, after we had conquer'd them,
'our Superiours thought fit to capitulate, and
'ruin us: I wiſh them God's, and the King's
'Pardon for it.

'May it pleaſe the Almighty to bleſs, pre-
'ſerve, and reſtore our only Rightful and
'Lawful Sovereign King *James* the Third; may
'he direct his Councils, and proſper his Arms;
'may he bring him to his Kingdom, and ſet
'the Crown upon his Head; may he protect
'him from the Malice of his Enemies, and de-
'fend him from thoſe who, for a Reward,
'would ſlay him inhocent; may he grant him
'in Health and Wealth long to live; may he
'ſtrengthen him, that he may vanquiſh and o-
'vercome all his Enemies; and finally, when
'it pleaſes his infinite Wiſdom to take him out
'of this World, may he take him to himſelf,
'and reward him with an everlaſting Crown of
'Glory in the next.

'Theſe, *my beloved Countrymen*, are the ſincere
'Prayers; theſe the laſt Words of me, who
'am

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'am now a dying Perſon; And if you have a-
'ny Regard to the laſt Breath of one, who is
'juſt going out of the World, let me beg of
'you to be Dutiful, Obedient, and Loyal to
'your only Sovereign Liege Lord, King *James*
'the Third; be ever ready to ſerve him, and
'be ſure you never fail to uſe all your Endea-
'vours to reſtore him; and whatever the Con-
'ſequence be, remember that you have a good
'Cauſe, and a gracious God, and expect a Re-
'compence from him.

'To that God, the God of Truth and Holi-
'neſs, the Rewarder of all who ſuffer for Righ-
'teouſneſs Sake, I commend my Soul, beſeech-
'ing him to have Mercy upon it, for the Sake
'of my dear Redeemer and merciful Saviour,
'Jeſus Chriſt our Lord. *Amen, Amen, Amen.*

July 13. 1716.

John Hall.

POSTSCRIPT.

'I Might reaſonably have expected my Life
'would have been ſaved, ſince I had ob-
'tained Five Reprieves; but I find that the
'Duke of *Hanover*, and his evil Counſellors
'who guide him, have ſo little Virtue and Ho-
'nour themſelves, that they are reſolv'd not
'to ſpare my Life, becauſe I would not pur-
'chaſe it upon baſe and diſhonourable Terms.
'I have Reaſon to think, that at firſt I could
'have ſecur'd both Life and Fortune, if I would
'have pleaded Guilty; and I doubt not but I
'might ſince have obtained Favour, if I would
'have Petition'd in a vile, ſcandalous Man-
'ner; but I was reſolv'd to do nothing,
'whereby I ſhould have diſown'd my King,
'and

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'and denied my Principles; and I thank my 'good God, both for inſpiring me with this 'holy Reſolution, and for giving me the Grace 'to perform it.

July 13. 1716.

John Hall.

Having in the foregoing Part of this Work obſerv'd, after the Trials and Executions in *Lancaſhire*, that about 500 of the inferiour Sort of Priſoners taken at *Preſton*, had been ſent to *Cheſter-Caſtle*, *Lancaſter*, &c. we come now to the Proceedings againſt ſome of them.

At the Summer Aſſizes for the County of *Lancaſter*, beginning at *Preſton* the 21ſt of *September*, 1716. two Hundred of the ſaid Priſoners were carried from *Cheſter* Caſtle thither; out of which the following only were try'd, *viz.*

Richard Hodgſon of *Walton*,
Thomas Shuttleworth of *Alſton*,
William Charnley of *Walton*,
John Swarbreck of *Weſham*,
} Found Guilty.

John Winkley of *Alſton*,
Thomas Park of *Croſton*,
Henry Winkley of *Alſton*,
Capt. *John Bruce* of *Preſton*,
} Pleaded Guilty.

Robert Walker of *Forton*,
John Daniel of *Dirton*,
John Waring of *Stighton*,
Richard Singleton of *Kirkham*,
George Coop,
Richard Abbot,
Lawrence Thorpe,
Hugh Burton,
Richard Walmſley,
} Acquitted.

William

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William Hesketh of *Mains*, Esq; } Respited till the
Edward Barron of *Weeton*, } ensuing Assizes.

On the 2d of *October* following, Five of the Eight condemned Persons were executed at *Lancaster*, viz. Captain *John Bruce*, *John Winkley*, *Thomas Shuttleworth*, *William Cotterley*, *Richard Hodgson*.

The four latter were all Papists, and Persons of mean Characters, who said nothing at their Deaths. Captain *Bruce* was a *Scotchman*, has formerly been a Dependent of the late Duke of *Hamilton*'s at *Preston*, and acted as his Gentleman of the Horse, or Companion; but on some Disgust left his Grace, and liv'd after at *Preston*, where, on the Arrival of the Rebels, he openly embark'd with them. At the Place of Execution he made no Speech, but delivered the following Paper to the Sheriff.

The PAPER *of Captain* JOHN BRUCE.

Brethren and Countrymen,

'I Am brought to this Place to discharge the 'last Debt I owe to Nature, and cheerfully 'resign to the blessed Will of Almighty God, 'whose Mercy I adore, in that he hath af'forded me his Grace and Means sincerely to 'repent me of my past Sins, and such Time 'to prepare for that blessed and glorious 'Change, which I hope to meet with in a few 'Moments.

'I am not ashamed of that Cause for which I 'die, but rejoice that I am worthy to be a Sa'crifice, in the Vindication of the undoubted 'Rights of my Lawful and Natural Liege Lord 'King

'King *James* III. and the expiring Liberty of 'my dear Country. I always firmly believ'd 'the hereditary Right of Succeſſion to the Im-'perial Crown of theſe Realms, to be a fun-'damental and unalterable Part of the Con-'ſtitution; and could never think, that any 'Difference in Religion, or any the pretended 'Laws, which never yet received the Royal 'Aſſent of any Lawful King, could in any wiſe 'diſingage me, or any honeſt Man, from that 'Duty and Allegiance which is due to our Law-'ful Sovereign King *James* III. whoſe Title by 'Birthright is clear and unqueſtionable; and 'was therefore engag'd, by the ſtrongeſt Obli-'gations of Duty, Honour, Religion, and Law, 'to join with his Loyal Subjects in the juſt 'Endeavours to reſtore him to his Rights, and 'break through that Uſurpation and Fence of 'Rebellion, which has ſo long kept him from 'them.

'God in his infinite Mercy forgive theſe 'Kingdoms, incline the Hearts of the People 'to ſtand as one Man, to bring in their Lawful 'King, and free themſelves from that merci-'leſs Tyranny which they now groan under. I 'am grown in Years, and not much ſhort of 'what the Royal Pſalmiſt calls the Age of Man, 'and have known many Struggles in order to 'preſerve the Conſtitution and ſinking Liber-'ties of the People, and ſeveral Turns and 'Changes that have enſued; in all which, 'praiſed be God, I preſerved my Integrity, by 'a ſtrict Adherence to the Intereſt of my King 'and Country; and oppoſing, as far as in me 'lay, the Innovations that were daily introduc'd, 'to the Injury of the one, and the Inſlavery 'of the other.

'As

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'As one Wickedneſs is the Parent of ano-
'ther, ſo the Revolution begot the Union;
'and from theſe Sources flow the Waters of
'Bitterneſs, which the good People of theſe
'Nations ſo plentifully drink of at this Time.
'May God in his infinite Mercy work their
'ſpeedy Deliverance, and reſtore them to
'their ancient, happy Conſtitution and Govern-
'ment.

'As for my Religion, I was bred up a Prote-
'ſtant, according to the Doctrine and Diſcipline
'of the Church of *England*, wherein I have
'ever liv'd, and in which (by God's Grace
'and Mercy) I ſhall die: It taught me to give
'both God and the King their Due, to deal
'juſtly with all Men, forgive my Enemies, and
'expect Salvation through Jeſus Chriſt. Her
'Doctrines and Government I embrace, and
'pray God to reſtore her to her former Purity,
'Peace, and Proſperity. I beſeech all whom I
'have any Ways offended, to forgive me, as
'from the Bottom of my Heart, I do all who
'have, in any Ways, injured me; and particu-
'larly thoſe, who were concern'd in my Proſe-
'cution, or in any Ways inſtrumental in pro-
'moting my Death. I forgive that greateſt of
'Injuries, their ſurprizing me into a Confeſſion
'of their Indictment, by bringing me to a Trial
'two Days before the Time mentioned in their
'Notice; and without ever giving me any Copy
'of the Jury; being a *Scotſman*, and a Stranger
'to the Laws of *England*, I was the more liable
'to be impos'd on; God, of his infinite Mercy,
'forgive them, as I freely do.

'I think it incumbent on me to take this laſt
'Opportunity, of vindicating my Honour from
'that Report, which traduced me as unfaithful

'to his Grace the late Duke of *Hamilton*, whilſt 'I had the Honour, which was about Twenty 'four Years, to be with him as a Companion 'and humble Servant; and hereby declare, up-'on the Words of a dying Man, and as I ſhall 'anſwer it before Almighty God, that what 'hath been ſaid to aſperſe me on that Ac-'count, was utterly falſe, or any Diſpleaſure 'his Grace conceiv'd againſt me concerning it, 'entirely groundleſs; I always loved him, and 'dealt friendly by that Noble Duke, as God, 'the Righteous Judge, will witneſs for me.

'Thus have I diſcharged my Conſcience; 'and now, bleſſed be Almighty God, that hath 'brought me to this happy Period of my Pil-'grimage. I have finiſhed a long Courſe, 'and adher'd without wavering to my King, 'the Lord's Anointed's Cauſe, for, and in 'which I die, and hope this Day to be with 'my Saviour, tranſlated to rejoice with other 'Loyal Sufferers, and all the Saints and Angels 'for evermore.

John Bruce.

October 2. 1716.

About the ſame Time, one *John Knox*, a common Soldier, was ſhot at *Perth*, for deſerting to the Pretender, during the Rebellion in *Scotland*. At the Place of Execution he delivered the following Paper.

The SPEECH *of* JOHN KNOX.

My Friends and Countrymen,

'BEING in a few Minutes to appear before 'God's Tribunal, to give an Account of 'the Deeds done in the Body; and apprehend-'ing

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'ing that thoſe, who are to overſee the Exe-
'cution of the Sentence againſt me, will not
'allow me to ſpeak my Mind freely, I leave
'this Paper to be publiſhed after my Death:
'And in Caſe it be kept up, or deſtroy'd, I have
'left another Copy with a Gentlewoman in
'Town, who, I am confident, will cauſe pub-
'liſh it, ſince it is the Deſire of a dying Man.

'With Shame and Sorrow I acknowledge,
'that I am a great Sinner, and that I have of-
'fended God in Thought, Word, and Deed;
'yet I truſt there is Mercy for me, as for all o-
'ther Penitents, through the Merits and Me-
'diation of my Bleſſed Saviour. I heartily for-
'give all my Enemies, as I deſire Forgivance
'at the Hand of God. Though the Lord's
'Prayer is, by many, much neglected, and the
'Uſe of it, in a great Meaſure, aboliſh'd, I can-
'not but highly eſteem it. As to that Part of
'it, which concerns the pardoning of Injuries
'done to me, I will ſay it with my laſt Breath,
'and I thank God that I can, with all the Sin-
'cerity of the World, ſay, That, from the Bot-
'tom of my Heart, I freely forgive all Men, as
'I deſire to be forgiven of God.

'I bleſs God, I ſuffer for Well-doing, for aſ-
'ſerting the Right of my only Rightful Sove-
'reign King *James* VIII. and endeavouring to
'relieve my miſerable, oppreſſed, Native
'Country. My Proſecutors tell me, it is for
'my Deſertion of the Camp at *Stirling*; and
'they alledge, though they have not made it ap-
'pear, that I joined the King's Army, whom
'they call Rebels; and that I was with the Duke
'of *Mar* in *Perth* all Winter. My wretched Pri-
'ſonkeeper, who is turned ſo violent on the
'Uſurping-lay, ſays, *He has it from thoſe he*

'*calls*

'*calls honeſt Men:* But from him, and all ſuch 'as he is, Good Lord deliver all good Chri-'ſtians.

'Now, to ſatisfy my Proſecutors, and others, 'I acknowledge I ſerved under the Duke of '*Brunſwick* for ſome Time, but with the great-'eſt Reluctancy; and, when Conſcience could 'no longer endure the Violence done to it, I 'joined the King's Army that went to *Preſton*, 'where the King's Intereſt was ruin'd, and ma-'ny a brave Man was betray'd out of his Life 'and Fortune; for I think my ſelf bound to 'tell them, that I reckon there was Treachety, 'as well as Cowardice, in ſome, who had the 'chief Command there: I heartily wiſh all of 'them may repent and amend. It has been 'ſaid, that ſome of thoſe who carried on the 'Union, got the Repentance of *Judas*; but I 'heartily pray, that all who are hired to ſup-'port the Duke of *Brunſwick* on the Throne, 'denying and rejecting their true Maſter and 'Sovereign, may get *Peter*'s Repentance, who 'deny'd his. For I am fully perſuaded, that 'till our natural and rightful Sovereign is in 'the ſettled and peaceable Poſſeſſion of his juſt 'Right; and the Principles of *Whiggery*, which 'deſtroy all Order of Government, are ex-'tirpated, Peace will never flouriſh in *Britain*, 'which I pray God may forward.

'I am the ſecond Sacrifice in this Place for 'King *James* VIII. I pray God I may be the laſt; 'and that of his infinite Mercy, he may put a 'Stop to the Bloodſhed and Murder of theſe 'Times.

'Since it is God's Will that I am deprived of 'my Life, I hope to glorify God by my Death, 'which I ſhall ſuffer cheerfully, ſince roved

'away

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'away in the 23d Year of my Age, for my 'King and Country.

'I pray God may preſerve the King, and 'that he may always bleſs him, and all the 'Endeavours and Enterprizes for his Reſtau-'ration; that God may encreaſe the Number 'of his true Subjects, and convert all the Ene-'mies of our King and Country. Being now 'to recommend my ſelf to God by Prayer, I 'bid you all Adieu.

Sic Subſcribitur,
JOHN KNOX.

The next Paſſage in this Book, will be an Account of the Trials at *Carliſle*. In the Way to which, it may be neceſſary to inſert a Liſt of the Priſoners in the ſeveral Goals in *Scotland*.

In the Caſtle of Stirling.

MR. *Robert Murray*, Brother to *Abercairnie*.
Alex. Hay, Son to *Arnbath*.
Pat. Gordon, eldeſt Son to *Abertowre*.
Alex. Forbes, Son to *Buthley*.
Will. Robertſon, Brother to *Domhiles*.
Dr. *Jo. Kinloch*, Phyſician.
Alex. Smith, of the Family of *Mackintoſh*.
Dr. *Alex. Gordon*.
Francis Gordon of *Craig*.
Jo. Hamilton of *Gilſtain* in *Strabogie*.
Alex Gordon of the *Milne* of *Kincairden*.
Rob. Rollo, Elder, of *Powis*.
Ja. Rollo, Younger, thereof.
Will. Nairn, of *Baldiven*.
Pat. Auchterloney, Merchant in *Montroſe*.
Will. Stewart, Brother to *Ardvorlich*.
Ja. Carnegie, Surgeon in *Brechin*.

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Ja. Gordon, Surgeon to Sir *Donald Mac-Donald.*
Ja. Robertson, Brother to *Alex. Robertson* of *Straloch.*
Archibald Fothringham, Son to *Pourie.*

Prisoners in Edinburgh Castle.

Those with this Mark † *are pardon'd.*

Alexander, Marquis of *Huntley*, now Duke of *Gordon.* †
Robert, Lord *Rollo.*
William, Viscount of *Strathallan.*
Jo. Carstairs of *Kilconquhar.*
Francis Stewart, Brother to the E. of *Murray.* †
Col. *Jo. Balfour*, of *Fairnie.*
Major *Henry Balfour*, of *Denboge.*
Alex. Mackenzie, of *Frazerdale.*
Col. *Campbell*, of *Ormondale.*
Jo. Gordon, of *Glenbucket.* †
Sir *Thomas Calder*, of *Murrtoun.*
Da. Smith, of *Methuen.*
Thomas Drummond, of *Logie-almond.*
Will. Murray, of *Auchtertyre*, Younger.
Ja. Burnet, of *Monboddo.*
Ja. Ross, Son to the Bishop of *Edinburgh.*
Jo. Gordon, Uncle to the Earl of *Aboyne.*
Da. Garden, of *Lawtoun.*
Mr. *Will. Hay*, in *Perth.*
Tho. Drummond, Brother to *Strathallan.*
Will. Forbes, of *Blacktown.*
Col. *Ja. Urquhart.*

Pri-

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Prisoners in Blackness Castle.

Colin Mackenzie, of *Kindaire*.
Jo. Ratray,
George Taylor,
Alex. Garrioch, } *Writers*.
Pat. Stewart,
Ja. Stewart, in *Boyne*.
Charles Garden,
Will. Adamson,
Tho. Robertson, in *Balntroon*.
} *All taken at* Sheriffmure.

John Stewart, of *Foss*.
John Stewart, of *Glenbuckie*.
Pat. Robertson, of *Dungarthle*.
} *These three were taken passing the* Forth.

James Carnegie of *Balnamoon*, with the Rebels in Arms.

Prisoners in Edinburgh Tolbooth.

William Kerr, of *Abbotrule*.
——— *Scot*, Doctor of Medicine.
Thomas Cranstoun, Clerk of *Kelsoe*.
Will. Anslie, of *Black-hill*.
Robert Trotter, of *Belford*.
And. Rutherford, Surgeon in *Jedburgh*.
Alex. Burnet, Baillie in *Brunt-Island*.
Walter Graham, Merchant in *Dundee*.
George Robertson, Officer of Excise.
Da. Thripland, Son to Sir *Da. Thripland*.
Andrew Auchenleck.
John Wilson.

Prisoners in Cannongate Tolbooth.

——— *Seton*, Elder, of *Lathriss*.
——— *Seton*, Younger, thereof.
Dr. *Carmichael*, of *Blamblae*.

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Capt. *Pat. Auchmutie.*
Will. Ogilvie, Chamberlain to the Earl of *Errol.*
Alexander Charles, Advocate in *Aberdeen.*
Jo. Forbes, Bailly to the late Earl of *Mar*; alias *Black Jock*, died at *Carliſle.*
Ja. La-pan, Fencing-Maſter.
Ja. Irvine, Gauger.
Ja. Erskine, Brother to *Pittodrie.*

Priſoners in Winton-Houſe.

J. *Bethon*, of *Balfour.*
Tho. Tulloch of *Tannachie.*
William Menzies, of *Pittfoddells.*
John Carnegy, of *Finhaven.*
John Patton, of *Grandholme.*
Sylveſter Douglaſs, of *Whiteriggs.*
John Lindſay, of *Pitſcandly.*
Peter Bannerman, Merchant in *Aberdeen*, the firſt Knight made by the *Pretender.*
George Maule, Factor to the Earl of *Panmure.*
Jo. Hutchen, Provoſt of *Aberbrotheck.*
James Spence, Merchant in *Brechin.*

Of theſe, there were Six only, who were with the *Northumberland* Rebels, and returned to *Scotland*, after they had been in *England*, viz. *William Ainſley*, of *Black-hill*; *William Kerr*, of *Abbotrule*; —— *Scot*, Doctor of Phyſick; *Thomas Cranſtoun*, Town Clerk of *Kelſoe*; *Robert Trotter* of *Belford*; and *Andrew Rutherford*, Surgeon in *Jedburgh.*

Of thoſe who were brought to *Carliſle*, and there arraign'd, try'd, or acquitted, the following Account will make appear; there being ſome few diſcharg'd in *Scotland*, and one or two ſent Home from *Carliſle*, the reſt are in the Account following: On

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On *Friday* the 7th of *December* 1716. the Judges appointed by ſpecial Commiſſion for this Service, open'd their Commiſſion at *Carliſle*. They were Mr. Juſtice *Tracy*, and the Barons *Price*, *Smith*, and *Scroop*; in which were alſo join'd, the Earl of *Carliſle*, Lord Viſcount *Lonſdale*, Lord Biſhop of *Carliſle*, Mr. *Lowther*, and the Recorder *Aglionby*. After the Charge given to the Grand-Jury, Twelve of the Priſoners, againſt whom Bills had been found, were brought to the Bar.

Theſe were, Col. *John Balfour*, Major *Henry Balfour*, *Pat. Achmootie*, *John Rattray*, Sir *Thomas Calder*, *John Robinſon*, *Arch. Fotheringham* of *Powrie*, *Charles Garden*, *Alex. Hay*, *Robert Rollo*, *Pat. Seton*, and *George Maule*, Steward to the Earl of *Panmure*, againſt whom the Grand-Jury had return'd the Bill *Ignoramus*.

After this, the Clerk of the Crown read a Form to them, ſignifying that Bills were found againſt them for High Treaſon in levying War, *&c.* That the Law allow'd them Counſel to plead for them, and a Copy of their Indictment, and Five Days Notice of their Trials, if they deſired it; and thereupon another Clerk delivered them Copies of their ſeveral Indictments accordingly; and they deſiring the five Days mentioned, the Court allow'd them ſeven Days, *viz.* to the 15th, and gave them Notice of Trial accordingly.

On the 10th, *the following Priſoners were brought into Court in the ſame Manner.*

James Carnegie of *Ballamoon*, *Tho. Tulloch*, *Alex. Forbes*, *Walter Graham*, *John Roſs*, *John Gordon*, *William Hay*, *Tho. Drummond*, *James Carnegie*

negie of *Finhaven*, *Robert Murray*, Col. *James Urquhart*, *John Carſtairs*, Dr. *Scot*, Mr. *Trotter*, Mr. *Rutherford*, Mr. *Carr*.

On the 11*th*, *William Murray* of *Auchtertyre*, *John Lindſay*, *Pat. Gordon*, *Sylveſter Douglaſs*.

On the 12*th*, *John Robertſon*, Dr. *John Kinloch*, *James Carnegie*, Surgeon; *John Hamilton*, *George Taylor*, *James Rollo*, Son to *Rob. Rollo*.

On the 13*th*, *Patrick Robertſon*, *John Stewart* of *Foſs*, *John Stewart* Jun. of *Glenbuckie*.

On the 15*th*, *Alex. Mackenzie* of *Frazerdale*.

On the 17*th*, Brigadier *Colin Campbell*.

The two following were diſcharg'd; the Bills againſt them being return'd (*Ignoramus*.) *James Burnett* of *Monbeddo*, *James Spence*.

Alexander Carnegie was indicted by the Name of *James*, and had ſome Advantage by it; but as it might in the main be ſome Obſtruction to the Mercy he reſolv'd to hope for, he gave Notice of it himſelf, and the Bill was given back to the Grand-Jury, and found a ſecond Time.

On the 10*th*, when the ſecond Twelve were brought to the Bar, Mr. *Charles Garden*, one of the firſt Twelve, broke the Way, and moving the Court that he might be brought to the Bar and Arraign'd, pleaded Guilty, and threw himſelf upon Mercy.

On the 11*th*, Mr. *William Murray* of *Auchtertyre*, and Mr. *James Carnegie* of *Finhaven*;

On the 12*th*, *Fotheringham* of *Powrie*, Colonel *James Urquhart*, *Alexander Hay*;

On the 13*th*, Sir *Tho. Calder*. All did the like.

On

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On the 15th the Court sat again, when, instead of hearing Trials, as was appointed, more of the Prisoners pleaded Guilty, as the Six had done before. These were,

Colonel *John Balfour*, Major *Henry Balfour*, *Pat. Auchmootie*, *John Rattray*, *Robert Rollo* of *Plowhouse*, *Pat. Setoun*, *John Ross*, *John Gordon*, *Robert Murray*, *Alexander Carnegie*.

On the 17th, Mr. *Carstairs*, *Alexander Mackenzie* of *Frazardale*, *James Carnegie*, Surgeon; *James Rollo*, Son of *Rob. Rollo* of *Plowhouse*; *Alexander Forbes*, *Walter Graham*, *Tho. Drummond*, all pleaded Guilty.

On the 19th, Mr. *William Hay*, who had demurr'd, and pleaded by Council to the Jurisdiction of the Court, finding his Plea was overrul'd, pleaded Guilty. As did also *John Robertson*, who was set by as a Lunatick; Dr. *John Kinloch*, *John Hamilton*, *George Taylor*.

On the 20th, *Pat. Gordon*, *Pat. Robertson*.

All these having pleaded Guilty, there remain'd of all the Prisoners from *Scotland*, that they had Evidence against, only Four to be try'd, *viz.* Brigadier *Campbell* of *Ormondell*, Mr. *Tulloch*, *Stewart* of *Foss*, *Stewart* of *Glanbuckie*; of whom, the two *Stewarts* gave such Accounts of themselves, and the Court receiv'd such Satisfaction in that Account, that the Solicitor General thought fit to acquaint the Court, that it would be for his Majesty's Service, to allow a Writ of *Noli Prosequi* to be enter'd in their Behalf; which was order'd accordingly, without, however, mentioning any thing in Publick, of the Reasons which procured them so much Favour.

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Mr. *Tulloch* resolv'd to stand it, and took his Trial the *26th*, tho' the King's Council examined no less than seven Witnesses against him, who all testified his being in the Earl of *Mar*'s Army, and named Time and Place to the several Actions in which he had appear'd, and agreed very well in their Evidence; so that all that heard it, believ'd he would be found Guilty; and People began to say, he had been ill advis'd, and that it would have been much better for him to have pleaded Guilty, and cast himself upon Mercy, as others had done; but Mr. *Tulloch* went upon a quite different Foot in his Defence, and not contending the Fact, or whether it was true or no that he was in Arms, or in the Army aforesaid, his Council insisted, that he was not there in the Sense of the Indictment; that he was there indeed as a Prisoner, or as a Man not in his own Power; but that he was not *sui juris*, but was taken by Force by the Troops of the Marquis of *Huntley*, and carried along with them against his Will, which the Council alledged, was not Rebellion within the Words of the Indictment; that the Adverbs of the Indictment would not hold; for that it was not *traiterously*, *seditiously*, and *advisedly*, but unwillingly, compulsively, and forcibly, against his Intention, Resolution, and Design: The Witnesses which he produced, proved that he was thus forcibly taken, and brought away from his own House; that he entreated them not to carry him away, being antient, and infirm, and unfit for the Service, or for the Hardship of the Field; that he protested against the Violence they used with him, and that he would not serve them any otherwise than by Force.

His

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His Witneſſes alſo prov'd the Force upon him all the Way; how he was guarded leaſt he ſhould make his Eſcape, and made to ride between two Horſemen into the Field, with ſeveral other Circumſtances, ſo ſatisfying to the Court, that the Judges, in ſumming up the Evidence, was pleas'd to give their Opinion in his Favour, and the Jury brought him in Not Guilty.

The next who was to take Trial, was *Colin Campbell* of *Ormondell*, or the commonly call'd, Brigadier *Campbell*: He was an old Soldier, and had been Twenty Years in the Service of the *Czar* of *Muſcovy*, where he had attain'd from a private Gentleman to be a Brigadier of Foot, and Colonel of a Regiment of 2000 Men; he quitted that Service upon the News of the Affair in *Scotland*, and, no doubt, having a different Account of the Circumſtances of Things than he found true; for having got Shipping in the *Sound*, and landed in *Scotland*, he found the Chevalier return'd to *France*, the Army diſpers'd, and the Gentlemen on all Hands ſhifting for their Lives, he got into the Iſle of *Skey*, to the Intereſt of the *Mac Donalds*, and was at the Head of above 1500 Men. When the Troops ſent thither to attack them, arriv'd there, he did his Part as a Soldier, whatever the Cauſe was he appear'd in, and encouraged the Men all he could; but when the Troops appear'd, his Men all fled, and he being a Man not uſed to turn his Back, ſtood ſtock ſtill with his Arms in his Hands, till an Officer came up to him, and offering him Quarter, he preſented him his Sword, and was taken.

There was no Poſſibility of his making any Defence againſt all theſe Circumſtances of Guilt, yet whether it was that he expected no Mercy,

or

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or that he reſolv'd to ſeek none, we know not, but he pleaded Not Guilty; and at that Time, for his Trial, the Officers were ſent to his Chamber to fetch him to the Bar; when they came into his Room, they found nothing there but his Hat and Perriwig; the Brigadier had, it ſeems, found Means to eſcape out of the Caſtle.

Things ſtanding thus, and the Court being inform'd of it, and that there were no more Proceedings before them, the Petty Jury were diſcharg'd, as the Grand Jury had been ſome Days before, and then they proceeded to paſs Sentence.

Accordingly the Priſoners who had pleaded Guilty, were call'd up the ſame Day, and Sentence was paſt upon them, as is uſual in Caſes of Treaſon.

The Names of thoſe, on whom Sentence of Death was paſt, is as follows, being 25 in all;

John Balfour.
Henry Balfour.
William Hay.
Tho. Drummond.
Patrick Auchmontie.
John Rattray.
Charles Garden.
Robert Rollo.
Pat. Seaton.
Walter Graham.
John Roſs.
John Gordon.
James Carnegie.
John Hamilton.
Sir *Tho. Calder.*
Rob. Murray.
James Urquhart.
John Carſtairs.
Sylveſter Douglaſs.
Pat. Gordon.
John Lindſay,
John Kinloch.
Pat. Robertſon.
Alex. Carnegie.
Alex. Mackenzie.

The General Roll of the Priſoners was then call'd over, and there not appearing to be any Pro-

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Proceſs begun, or any Information offered againſt any more than as above, the Court order'd all the reſt to be diſcharg'd, to their great Joy and Satisfaction: And in this particular at leaſt, thoſe Gentlemen are oblig'd to be very well ſatisfy'd in the Manner of Proceedings in our *Engliſh* Courts of Juſtice, ſeeing they could not have expected ſo effectual, and ſo quick a Diſcharge in their own Country.

The Proceedings being thus ended, the Commiſſion cloſed, and the Court broke up.

The Names of thoſe who were diſcharged for want of Proceedings, being 36 in all, are as follow:

James Burnet.
Alexander Scot.
William Ainſlie.
Andr. Rutherford.
William Forbes.
Tho. Cranſtoun.
Rob. Trotter.
Rob. Seaton.
William Kerr.
Colin Mackenzie.
Alex. Charles.
John Patton.
James Gordon.
Alex. Burnet.
William Stuart.
Tho. Robertſon.
Will. Adamſon.
Alex. Smith.
James Garden.
And. Auchinlech.
Pat. Bannerman.
Alex. Garloch.
James Ereskine.
James Irwin.
George Robertſon.
William Robertſon.
Pat. Stuart.
James Stuart.
George Gordon.
John Robertſon.

George Maul, *James Spence*, *James Burnet*, } Brought in *Ignoramus*.

John Stuart, *John Stuart*, } Acquitted by *Noli Proſequi*.

Tho. Tulloch, Try'd, and Acquitted.

At

At the same Time that these Proceedings were in Hand, at the Castle of *Edinburgh*, a Serjeant call'd *Ainsley*, with two Soldiers of the Garrison, were try'd by a Court Marshal, for conspiring to betray the Castle, in the Beginning of the late Tumults, before the Rebellion was broken out.

The two Soldiers were excus'd; but the Serjeant was found Guilty, and was sentenc'd to be hang'd over the Castle Wall; which was accordingly done on *Monday* the 24*th*. But at his Execution he said nothing.

The following Account was sent to the Author of this Work out of Cornwal, *with a Desire to publish it after the* Manuscript.

WHEN the Clouds of Darkness hovered over these Kingdoms, *Cornwal*, though in all Reigns the favourite County of *England*, famed for Loyalty and Submission to the Supreme Power; yet the Infection gained so strong a Footing, that though the Leaders and Plotters of that diabolical Design never openly appeared, their Emissaries not staying, or forbearing till the Word of Command, hurry'd themselves at once into an open Rebellion, without either Arms, or other Weapons fit for such an Enterprize, or Security for a Retreat.

You must know, *Sir*, that the main Design of these hot-headed Wretches were, to incite the *Tinners* of this County, who are a great Body of Men, strong, hardy, and courageous, who for about three Years together were continually tampered and under-hand insinuated to, that a Sett of Men in this Kingdom, called by the Name of *Whigs*, were for undermining and sap-

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ſapping the Foundation of their Church; and that, in Time, would deſtroy all Kingly Government. Theſe Notions were induſtriouſly inculcated and ſpread about, eſpecially by Attorneys Clerks, and Gentlemens Stewards, who are in theſe Places very numerous, a few excepted; theſe being thought the politer Sort of the People, had their Leſſons and Inſtructions at large. The Cry began, *High Church and* Sacheverell *for ever*; ſome began to idolize him, eſpecially a Prieſt nigh the Land's End, in the ſame County, who cauſed it to be written in Capital Letters on one of the Pillars of the ſame Church, that *the Church of Chriſt, under God, ow'd its Safety and Protection to that great and learned Divine, Dr.* Henry Sacheverell: I cannot ſay, theſe were the very ſame Words, but am pretty ſure to the ſame Purpoſe, and believe are now to be ſeen; a Man as famous for his amorous Intrigues as Divinity.

While theſe Matters were in Action, the Right Honourable *Hugh Boſcawen*, Eſq; Comptroller of his Majeſty's Houſhold, Lord Warden of the Stannaries in *Cornwall* and *Devon*, a Poſt of conſiderable Authority and Power in the County of *Cornwall*, arrived there; no ſooner did he appear, but the Clouds began to vaniſh, the Ringleaders, or Heads of the Rabble, began to ſneak, and fawn about him, throwing themſelves at his Feet, and deſiring Favour: He immediately iſſued out Orders for raiſing the Militia, Watch and Ward to be kept in all Towns and Pariſhes, himſelf riding about the County continually; his indefatigable Example will ſhew to Poſterity, that he is as brave as he is loyal.

About

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About the Beginning of the Rebellion in the *North*, one Mr. *Francis Painter*, Son of Mr. *Francis Painter* of *Treliſick*, in the *Weſt* of the County of *Cornwall*, was prevailed on to be Leader of a Parcel of hot-headed Fellows; and in a Sort of drunken Humour, came to the Market Place of St. *Collomb* in the ſame County, pretending to read King *James*'s Declaration, being the Market Day there; but the Mob gathering in great Crouds about them, they did not then think fit to proceed with reading it, but diſperſed, and betook themſelves to their Horſes, which were prepar'd for that Purpoſe: This *Painter* and a Servant, with one *Darr*, an impudent Bailiff, got to *London*, being there undiſcovered ſome Time; but *Painter*'s Servant, who had a Sweet-Heart at St. *Collomb*, and he writing to her from *London*, the Poſt-Maſter ſuſpected the Letter came from one of thoſe Fellows, and that it might give an Account where they were to be found; that on inſpecting the Letter, it was diſcovered where to find them at *London*: Immediately Warrants were ordered to take them into Cuſtody, who were all ſent to *Newgate*; but they denying their Names, and that they were the Perſons mentioned in the Warrant, a Meſſenger was ſent to *London*, who knew them particularly well, and coming to *Newgate*, were found to be the ſame Perſons; immediately a Proclamation was iſſued for the apprehending and taking the ſeveral other Perſons concerned in that Rebellion, with a Reward of *Fifty Pounds*, or ſome ſuch Sum, for taking either of the Perſons mentioned in the Proclamation, and theſe were ſecured in *Newgate*, till the next Aſſizes held for the County of *Cornwall*; and being there indicted, and ready for Trial for High

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High Treaſon, laid Hold on a late Act of Parliament, giving Priſoners Five Days Notice after the Delivery of a Copy of their Indictment; ſo that their Trial was reſpited till the next Aſſizes after. In the mean Time, *Darr* the Bailiff dy'd in the Priſon of *Launceſton*, being the County Gaol, where the Prieſt or Parſon, with a great many of the *Jacobite* Gang, bury'd him in great Pomp and Splendour, notwithſtanding his being a poor, indigent Wretch.

Painter being try'd at the next Aſſizes, was acquitted; the Evidences which appeared againſt him, and the others, were ſo tampered with, that when they came to be examined, they pretended they knew nothing of the Matter, and retracted from every thing they depoſed in their Depoſitions, when theſe Priſoners were firſt proſecuted; and they were asked, whether ſuch and ſuch Things were true, which they had ſet forth in their Depoſitions? Their Anſwer was, *It might be ſo, it might be ſo*; *but they did not know, they could not tell*, and ſuch like Stuff. The Council for the Priſoners adviſed them to Petition for farther Time, to prepare for their Trial; (No,) they would not; they ſaid, they were better acquainted with the Evidences than they were. After ſumming up the Evidences, the Jury, after a little Pauſe, brought them in *Not Guilty*; therefore the ſeveral others, *viz.* *Incledon*, and another an *Apothecary*, his Name I don't know, who were taken in the Country, were immediately ordered to be diſcharged; there was one *Heskin*, and another not yet taken. After theſe Matters were all over, the Friends of theſe rebellious Fellows appeared with white Cockades in their Hats, as a Token of Joy.

At

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At the ſame Time of this Rebellion, an Order of Council came down, for the apprehending and ſecuring Sir *Richard Vivian*, Bart. who was taken into Cuſtody by a File of Muſqueteers, from *Pendennis Caſtle*; the like was done to Mr. *Baſſet*, Mr. *Pollard*, and Mr. *Tonkyn*; but being not to be found, in a few Days after ſurrendered themſelves to Mr. *Boſcawen*, who received them with abundance of Civility; and took only their own Recognizances for their forth coming; ſo that this County, Thanks to God, was preſently at Quiet again.

From the Land's End at
Cornwall, Jan. 2.
1716.

Since

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SINCE we have oblig'd our ſelves to take in all who have ſuffer'd for, or on Account of, the Rebellion, and the Conſpiracy that led to it, we think the memorable Caſe of the following Perſon is not to be omitted.

An Account of the Caſe and Trial of Francis Lewis Francia, *the* Jew, *apprehended, and afterwards indicted, and try'd for High-Treaſon.*

THIS Perſon had been apprehended in *September* 1715, and ſome little Time after committed cloſe Priſoner to *Newgate*; In the Seſſions following not being brought to his Trial, he mov'd by Council to be admitted to Bail; but upon Information from the Attorney-General, that there was an Indictment for High-Treaſon preferr'd againſt him, and nothing obſtructed his Trial but the Want of proper Evidence for the King, which they prov'd were wanting, through the Neceſſity of their Abſence abroad on his Majeſty's Service, his Motion for Bail was over-rul'd; and he remain'd Priſoner till the Aſſizes in *January*, 1716-17. when, on the 22*d* of that Month, he was brought to his Trial.

He was indicted 'for conſpiring and imagin-'ing the King's Death, and for carrying on a 'traiterous Correſpondence with Perſons be-'yond the Seas, and ſolliciting Aſſiſtance from 'thence, to levy War againſt his Majeſty, and 'excite a Rebellion, to favour an Invaſion of 'his Majeſty's Dominions, in order to fix on

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'the Throne the Perſon, who, during the Life of 'the late King *James* II. ſtyl'd himſelf *Prince* 'of *Wales*: And this founded upon ſeveral 'Letters and Papers ſeiz'd in his Cuſtody.

To prove the Credit of thoſe Papers which were produc'd in Court, and that they were the ſame ſeiz'd in the Priſoner's Cuſtody, the King's Council ſwore and examin'd ſeveral Witneſſes; and in the firſt Place, Mr. *Joſeph Smith*, one of his Majeſty's Meſſengers. He depoſed in Subſtance, 'That on the 19*th* of 'September 1715, he and Mr. *Nathan Wilcox*, 'another of his Majeſty's Meſſengers, ſince de-'ceaſed, were ſent with a Warrant from the 'Lord Viſcount *Townſhend*, to apprehend the 'Priſoner. That when they came to his 'Houſe in *Plough-Yard* in *Fetter-Lane*, they 'found him in Bed with a Woman, whom he 'called his Wife; and bid him get up, for 'they had a Warrant of *High-Treaſon* againſt 'him. That whilſt the Priſoner was dreſſing 'himſelf, this Deponent took Notice of a Clo-'ſet near the Bed-Chamber, in which was 'a Desk, on which lay the *Copy Book* of Let-'ters, and ſeveral looſe Papers, which he ſeiz'd 'according to his Orders. That the Priſoner 'endeavoured to perſwade this Deponent, not 'to take his *Copy-Book*, *which*, he ſaid, *contained* 'nothing but Copies of his Letters to his Corre-'ſpondents Abroad; but this Deponent thought 'fit to ſeize the ſaid *Copy-Book*, which, with 'the other Papers, and the Priſoner, this De-'ponent and Mr. *Wilcox*, carried in a Coach to 'the *Cock-pit*, and there delivered the *Copy-Book* 'and *looſe Papers* to *Horatio Walpole*, Eſq; Secre-'tary to my Lord *Townſhend*.' This was con-firm'd by the Depoſition of Mr. *Walpole*, who had

had the said Papers in his Custody, till he was sent to *Holland* to bring over the *Dutch* Troops, when he deliver'd them into the Hands of Mr. *Buckley*, who likewise deposed, That he kept them till Mr. *Walpole*'s Return. These three Witnesses being cross-examin'd, both by the Prisoner and his Council, as to their being certain, that the *Copy-Book* and *Papers* now produced, were the same that were seiz'd in the Prisoner's House; they were all positive in the Affirmative, because they knew them by certain Marks; and Mr. *Buckley*, in particular, because he had made Abstracts out of them, which he produced. After this, my Lord *Townshend*, who, together with Mr. Secretary *Stanhope*, was in Court, was desired to give an Account of what he knew concerning this Matter; and his Lordship, having taken his Oath, was pleased to depose in Substance, 'That upon Information given him, that *Francis Francia* was concern'd in a treasonable 'Correspondence, carried on between the *Pretender*'s Friends here and those in *France*, his 'Lordship first ordered all such Letters as 'came from *France*, directed for the said *Francia*, to be stopp'd at the *Post-Office*, which was 'done accordingly. That his Lordship being 'by those intercepted Letters fully convinc'd 'of the said traiterous Correspondence, his 'Lordship then issued out his Warrant for apprehending the said *Francia*, and seizing his 'Papers. That on the 21*st* of *September* 1715, 'when *Francia* was first brought to his Lordship's Office to be examined, he appeared 'under the deepest Consternation; shew'd a 'Disposition to serve the Government, by an 'ingenuous Discovery of all he knew; freely

'consented to be examin'd upon Oath; and 'sign'd his Examination, which was taken 'down in Writing by Mr. *Samuel Buckley*, be-'fore his Lordship and Mr. Secretary *Stanhope*; 'Which Examination was also sign'd by his 'Lordship. That a Letter from Mr. *Harvey* 'of *Combe* having been found among *Francia*'s 'Papers, in which were *Figures* used instead of 'Names, *Francia* being the next Day (*Septem-'ber* 22, 1715.) examin'd concerning the same, 'explain'd the Meaning of the said Figures, and 'sign'd freely this second Examination; which 'was likewise sign'd both by his Lordship and Mr. 'Secretary *Stanhope*. That after *Francia* had thus 'been freely examin'd, he represented himself 'and his Family to be in so miserable a Condi-'tion, that his Lordship, mov'd with Compassi-'on, putting his Hand in his Pocket, gave him 'Three, Four or Five Guineas: A Charity 'which he never deny'd to those, who ap-'ply'd themselves to him in that lamentable 'Manner. That the Letter abovemention-'ed being three Days after shew'd to Mr. '*Harvey* of *Combe*, while he was under Exa-'mination before a Committee of the Privy-'Council, threw him into the greatest Agony 'and Confusion, insomuch that Twelve Hours 'after he stabb'd himself, notwithstanding he 'had been promised his Life, if he would 'make a full Discovery. That in the mean 'Time, his Lordship having Reason to suspect, 'that *Francia* did not deal so ingenuously as at 'first he seem'd dispos'd to do, his Lordship 'caused him to be committed close Prisoner 'to *Newgate*. And that he had not been long 'there, before his Lordship had convincing 'Proof of *Francia*'s prevaricating with him,

'by

'by a Letter which he wrote to his Wife, and 'which was intercepted by one of his Fellow-Prisoners in *Newgate*.' The Translation of which was as follows:

My Dear,

ALL I exhort you to is, to make your self as easy as you can. I do the same, and am well, having slept well last Night; and the Company here is much better than I expected. They are all TORIES, *and the major Part for the Government; that is, sent hither for being so, according to their Informations. Although all should fail, and my Lord* Townshend *should do nothing, the Business will be at an End in less than a Fortnight. You know upon what Account I am here, which cannot disgrace me: Be therefore comforted, and do not grieve, God will assist us. I neither know, nor have said any Thing against Mr.* Harvey; *nor can they do any Thing to him, unless he has other Affairs which I know not of. Therefore you may assure that* Frenchman *that's false; for I know nothing against that Gentleman, which is not intirely regular. He may only be suspected of being a Friend to the* Pretender; *but that was well known before; and if all who are so were to be punish'd, above Three Fourths of the Nation would suffer. Therefore I laugh at any Thing they can do me; all my Sorrow is, not to be with you; and I would not see you in this wretched Place, where you can't but grieve both me and your self.*

After the Reading of this Letter, the Prisoner alledg'd, that the Examination aforesaid had been extorted from him, since he was deny'd to read it over; and that Lord *Townshend* had given him Five Guineas, and promis'd him

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further Gratuities, if he would accuſe Mr. *Harvey*, and make himſelf a Witneſs againſt him: All which his Lordſhip and Mr. *Buckley* confuted; and to ſtrengthen this Confutation, Mr. Secretary *Stanhope* declared upon Oath, 'That he 'was preſent at the taking of *Francia*'s two 'Examinations, and ſet his Hand to one of 'them, *viz.* to that of the 22*d* of *September* '1715; That *Francia* had ſhew'd no manner of 'Reluctancy either to declare what was taken 'down in Writing by Mr. *Buckley*, or to ſign 'the ſame; that he could not be poſitive whe-'ther *Francia* read over his Examinations be-'fore he ſet his Hand to them; but this he 'was ſure of, that if he had deſired it, he 'might have peruſed them; no manner of Com-'pulſion being put upon him, nor any Threats 'nor Promiſes uſed to make him confeſs what 'he knew; but that *Francia* having repreſented 'himſelf in the moſt miſerable Condition, ſay-'ing, *He was not worth a Groat, and had not wherewithal to give his Wife a Dinner*, or Words 'to that Effect; my Lord *Townſhend*, out of Cha-'rity, gave him Three or Four Guineas.' After ſome other frivilous Objections, ſtarted either by the Priſoner or his Council, the Clerk read *Francia*'s firſt Examination, dated *September* 21*ſt*, 1715. in Subſtance thus: *That about two Years before, he became acquainted with the Abbot* Butler, *otherwiſe called the* Vidame *of* Cambray, *at the Time when the Duke* d'Aumont *was here. That ſoon after the ſaid Duke left* England, Francia *received a Letter from the ſaid* Butler, *then in* France, *recommending to his Care a* Law-Suit, *in which one* Barbara Butler, *a Kinſwoman of the ſaid Abbot, was concern'd. That this occaſion'd a Correſpondence between this Examinant*

and

and the said Abbot Butler, *which, from a little before the late Queen's Death, lasted till within few Days before* Francia *was apprehended. That during this Correspondence,* Francia *receiv'd from the said Abbot several Letters directed to Mr.* Edward Harvey *of* Combe, *and convey'd back several Letters from the said Mr.* Harvey *to the said Abbot, which Letters to the said Abbot from Mr.* Harvey, *were sometimes brought to* Francia *by Mr.* Harvey *himself, and at other Times sent to the Examinant by Mr.* Harvey. *That at such Times, during the said Correspondence, as the said Abbot* Butler *was at* Cambray, *Mr.* Harvey *usually brought or sent to* Francia *two Letters, one directed to the said Abbot at* Cambray, *and the other, either directed by Mr.* Harvey *himself,* To the Duke *d'Aumont* at the *French* Court; *or the said Mr.* Harvey *desir'd* Francia *to direct the same to the said Duke* d'Aumont; *Mr.* Harvey *telling him:* That he did not send the said Letters himself to *France*; not that he car'd a Pin if it were known, because we were in Peace with *France. That the Letters so deliver'd or sent to* Francia *by Mr.* Harvey, *for the said Abbot, or for the Duke* d'Aumont, *were by him sent over to* France, *under a Cover, directed to Mr.* d'Aulnay de Coulange, *alias* Payen, *at* Paris: *But about two Months before this Examination, that Method of Correspondence was changed; for the said* Payen, *instead of inclosing his Answers to Mr.* Harvey, *in Letters or Covers directed to* Francia, *wrote only to the latter; but order'd him to shew it to Mr.* Harvey, *or to deliver to him what he so wrote to* Francia; *which he did accordingly. That whereas in some of the Letters lately written to him by Mr.* Payen, *to be communicated to the said Mr.*

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Harvey, *which he carry'd to the said Mr.* Harvey *accordingly, and which being taken in this Examinant's Custody, were shewn to him, there are the Letters* M. H. *and* Mr. Le D. D. *and* My D. D. *and* M. B. *which seeming to be the initial Letters of Mens Names, he* (Francia) *understood, that the said initial Letters stood for Mr.* Harvey, *the Duke* d'Aumont, *the Duke of* Ormond, *and the Lord* Bolingbroke, *and verily believ'd the Design of the said Letters, written to him by* Payen, *to be communicated to Mr.* Harvey, *was the Design of the Pretender to invade his Majesty's Dominions.*

The *Second* Examination was then read, and was in Substance thus: *That having accidentally broke open the Letter of Mr.* Harvey *of* Combe, *which being found among his Papers, and despairing of being able to Seal it up again, so as it should not appear to have been open'd, he did not forward the same, lest he should lose the Confidence that was repos'd in him. That as to the Figures or Numbers us'd in the said Letter, he understood that* 6, *stood for the* French *King*; 8, *for the* Pretender; 9, *for his Majesty King* George; 17, *for the* Tories; *and* 22, *for the Duke* d'Aumont; *but that as for* 14, *and* 24000, *he knew not what they stood for.* This Examination was dated the 22*d* of *September*, 1715, sign'd by *Fra. Francia*, and taken before my Lord *Townshend*, and Mr. Secretary *Stanhope*, who both set their Hands to it.

Then was read the aforesaid *Letter*, upon the Discovery of which, 'twas generally then said, Mr. *Harvey* stabb'd himself, and in which, among other Particulars, he expostulated about some Disbursements he had made for the Duke *d'Aumont*; tells his Friend, *That he only gives him fair Words*;

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Words; *but that he shall not lay out more Money unless he be repaid*; and therefore presses him *to remind 22, to send him a Bill*. He adds, *that he is reflected on as a Pensioner to 6*; but that, nevertheless, *he shall omit nothing to serve 6, though at the Hazard of his Life and all he has*; and a little lower he says: *He'll do any Thing to serve 6, and 22*. Mr. *Harvey* also acquaints his Friend, *That great Interest is made for the ensuing Elections of Parliament Men*; *but assures him, that 8 gains Ground, and that 9 loses himself every Day*. The rest of this Letter is taken up with an Account of a *Bitch*, *Dogs*, and *Horses*, bought by Mr. *Harvey* for the Duke *d'Aumont*.

After the Reading of this Letter, the Prisoner's Council alledged, that the Letters produc'd, or to be produc'd to prove the Charge, should have been inserted in the Indictment, that so the Defendant might have had an Opportunity to make his Defence; and to that Purpose urged the *Statute* 7 *Guillielm*. III. from which he pretended to infer, *That in Cases of Treason, nothing ought to be given in Evidence to justify an* Overt-Act, *unless specify'd in the Indictment*. This was supported by Mr. *Hungerford*, who, in the first Place, took Notice *of the great and tender Care the Laws have taken to guard the Subjects against Prosecutions for* High-Treason; *the Consequences of which are not only Loss of Life, but Forfeiture of Estate, and the Ruin of whole Families*; and insisted, *that no Evidence should be received of any* Overt-Act *that is not expressly laid in the Indictment*. But this, after long Arguments on both Sides, was over-rul'd by the Court against the Prisoner.

Then the *English* Translations of all the Letters given in Evidence, were severally read by the

the Clerk. The first Letter was from Mr. *d'Aulmay* to *Fra. Francia*, Merchant at *London*, dated *Paris*, *February* 26, 1715. *N. S.* wherein *d'Aulmay* recommends to him, *to press with the utmost Vigour the Law-Suit with Messieurs* Treacher *and* Robinson, *about Wines sent over to them*; *directs him to use the Interest of the Chev.* Hanmer, (*or Sir* Thomas Hanmer) *his Friend*; *acknowledges Mr.* Harvey's *Favours towards* him; *professes his Gratitude*; *desires to be acquainted with his Concerns with the Duke* d'Aumont, *that he may procure him Satisfaction*: And, by Way of Postscript, intreats him also to *acquaint him with what passes in* England, *because he has Reasons of private Concerns to know what passes there*; assuring him, *That the Interest of his Wife, whose Family is* Irish, *is the only Motive of his Curiosity*.

The Answer from *Francis Francia* to Mr. *d'Aulmay de Coulange*, dated *London*, *March* 1$\frac{3}{4}$, 171$\frac{4}{5}$, imports in Substance, *That as for the Business of Mr.* Harvey, *with Mr.* Le D. D. (*or Duke* d'Aumont) *the Matter was, that Mr.* Harvey *had disburs'd about* 200 *Pounds Sterling*; *and that although Mr.* Le D. D. *had sent to pay him what he had advanc'd, it happen'd that the Person he had entrusted had not paid the same*; *therefore if Means could be found to give the said* D. D. *to understand*, (*without hinting that it comes from hence*) *that 'tis not just Mr.* Harvey *should be so long out of Pocket*; *'twas not doubted but it would have the desired Effect*; *for which* Francia *would, in particular, be very much oblig'd to* d'Aulmay. *As for News* (*adds* Francia) *from this Country, I learn sometimes more in the* Paris *Gazette than here, where the greatest Part of the House murmurs to see the* Low-Church *flourish. The latter are very eager for a War*; *but they want the Emperor*

and

and Money. 'Tis strongly reported, that a Match is very forward between the Prince, who is in Lorrain, *and one of the Arch-Dutchesses. Let me know what's in it, since that's essential to your Wife's Interest.*

In Answer to this, Monsieur *d'Aulmay* writes another Letter to *Francia*, dated *Paris*, *March* 20, 1715. in which, after some Particulars relating to a Letter of Attorney he had sent to Mr. *Arthur*; and the Departure of the Marquis *d'Allegre*, he tells *Francia*, *he may assure Mr.* Harvey, *he shall do his utmost to procure him Satisfaction, without exposing him to any Inconveniency. That some Mention was made of the Chevalier de St.* George's *Marriage with the Arch-Dutchess, when the Peace was made with the Emperor, but not since; and that, in his Opinion, a* PARTY-WAR *would best suit with the Chevalier's Affairs, and be more to his Advantage.*

Before this Letter could possibly reach *London*, *Francia* wrote to Mr. *d'Aulmay* the following remarkable Letter, dated *March* 10-21. 1715.

SIR,

BY my last of the $\frac{1}{4}$ *Instant, I gave you an Account of my Proceedings against the Sieur* Treacher, *which I again here confirm to you, and that I shall get you* ——— *between this and* July, *or he shall fly his Country. Here's a Letter for Mr.* Le D. D. *which, 'tis wish'd, may succeed better than the former, which have not been answer'd, though entirely for the Affairs; besides which, I must needs tell you by the By, that Persons of* 50 *or* 60 *Thousand Crowns a Year, cannot, with Prudence, run the Hazard of losing such Estates, unless more Encouragement be given them. You will be perfectly well understood, if you say this*

this to some Person familiar with that Lord, or to himself; and I add from my self, that the Misfortunes of a certain Person *are more owing to Neglect on your Side of the Water, than to the Party that's against him; so that if this continues, your Wife must lose all Hopes.*

The next Letter read was from *Francia* to *d'Aulmay*, dated *London*, *March* 17-28, 1715. importing in Substance: *That Mr.* Harvey *and he should be very much oblig'd to him, if he could find an Opportunity to have Justice done to Mr.* Harvey. *I am*, adds he, *perswaded, that to deal with him in this Manner is no good Policy; and if ever I have the Honour to confer with you, I shall convince you, how, by Neglects, (which, however, are not usual with those of your Nation) most important Affairs have miserably miscarried. As for News, we hear nothing but an approaching War. 'Tis even pretended, that the Emperor is coming again into our Measures; but I do not believe it; nor do I see a Possibility of raising Funds for a new War, at a Time when People are at their Wits End to pay the bare Interest of the Debts contracted in the last. —— Our Parliament met this Day to chuse a Speaker: We are now going to see what will be the Upshot of all the Threats.*

In Answer to these Letters, *d'Aulmay* writes to *Francia*, (*April* 2, 1715. N. S.) *That he has deliver'd to Mr.* Le D. D. *the last Letter he sent for him, to which an Answer had been return'd*; assures him, *That Mr.* Harvey *shall be repaid his Disbursements, as well for the private Accompt, as for that of Count* Thoulouse; And acquaints him, *That the Marquis* d'Alegre's *Departure does not seem forward; that the Works at* Mardyke *are redoubled; that Mr.* Cadogan's *Journey to* Vienna *does*

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does not give them much Uneasiness; and that he had spoke conformably to his Desire.

Francia, by a Letter dated *London the* 28*th* of *March*, *O. S.* or *April* 8, *N. S.* 1715. acknowledges the Receipt of Mr. *d'Aulmay*'s Letter of the 2*d* of *April*; and acquaints him, *That he had given Mr.* H ——— *an Account of his Negotiation. That both he and Mr.* Harvey *were the more oblig'd to* d'Aulmay, *because they still had Occasion for his good Offices with Mr.* Le D. D. *That what he said at the End of his Letter, of his having spoken conformably to* Francia's *Desire, was sufficient; and therefore every Thing ought now to be expected from the other Side of the Water.* After this, *Francia* tells *d'Aulmay, That he has removed his Law-Suit with* Treacher *to the Chancery*; and concludes his Letter in this Manner: *We see by the King's Speech to his Parliament, that there are yet no Alliances made; and by the Addresses of the Lords and Commons we plainly perceive, they have an Itching towards a War; but, at the same Time, they give us to understand, that they know not which Way to go about it: Besides, the Party of the* Pacifick *is far more numerous than the other, although these have at present the Majority of Votes in the Parliament, at which Three Parts in Four of the House are highly incens'd; and yet more, to see they pretend to impeach certain Persons of the last Ministry, which will infallibly make a great Noise: And if the* Whigs *would follow my Advice, and I were willing to give them a good one, they should lie still. Mr.* Prior *is one of these pretended Victims; his Papers are look'd over with malicious Eagerness; he is tax'd with having receiv'd great Presents in* France, *particularly a great Set of Gilt Plate; I believe that if it be so, he is so much the richer for it.*

Ten

Ten Days after the Date of this Letter, (*viz.* on the 7-18*th* of *April*, 1715.) *Francia* wrote another to Mr. *d'Aulmay*, importing, *That he is ordered to tell him from Mr.* Harvey, *that he will oblige him in desiring Mr.* Le D. D. *to send some Body hither to fetch the Dogs and Horses he has had so long, or else to order some Body here to take them.* He adds, *that Things are in such a Posture, that great Caution must be used not to give Umbrage to those in Power, who may put a wrong Construction upon the least Trifle, especially since the Departure of my Lord* Bolingbroke, *who is look'd upon here as Innocent; and People do not see how he could any Ways be hurt, notwithstanding the Superiority of the* Low-Party *in Parliament; which, however, is divided into Two, who terribly thwart each other; one of which Parties will at last join with the* Tories, *if the latter are willing: From all which 'tis easy to draw Consequences. The Dutchess of* Portsmouth, *who is at present here, gives great Offence, as I am inform'd, by pretending to prove, that the late King* James *had poyson'd his Brother* Charles II. *It was not expected, that after so many Years Retirement in* France, *she should come hither to revive that vulgar Report, which, at so critical a Time, cannot be for any good Purpose.—— There are at present great Debates in the Parliament. There was a Member of the* High-Party, *who had the Boldness to suggest, That this present Parliament was illegally assembled, since the King, in his Proclamation, gave the People to understand, that it would be a great Satisfaction to him if they chose* Whigs; *which, he said, is against the fundamental Laws of the Kingdom: Whereupon there arose high Debates; and by the Majority of Votes, to the great Surprize of the Publick, who expected that that Member should be sent*

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ſent to the Tower, *it was carried by a Hundred Voices*, That the ſaid Proclamation ſhould be examin'd; *which, 'tis thought, will cauſe great Diviſions. When I have any Thing particular to impart, I ſhall do it by a ſtrange Hand, and ſubſcribe* James Chretien, *which you muſt take Notice of; and provided you acquaint me, that you have received this preſent unopened, I ſhall be eaſy.*

In Anſwer to this, *d'Aulmay*, on the 24*th* of *April*, 1715. *N. S.* writes to *Francia*, and bids him *be eaſy as to what both he and Mr.* James Chretien *writ to him; deſires the latter to be very particular*; ſays, *that in theſe troubleſome Times Mr.* H——— *may make uſe of Mr.* James Chretien; *that when the Character of the Dutcheſs, lately gone to* London, *is well known, People will not be ſurpriz'd at the Part ſhe acts there; which, however, he hopes will produce a different Effect from what ſhe expects; and that they will at laſt come to a happy unravelling.* And in the Poſtſcript acquaints him, *That the Earl of* Stair *has not yet taken a Character.*

By another Letter of the 1ſt of *May*, 1715. *N. S.* Monſieur *d'Aulmay* acquaints *Francia*, *That they will forthwith work on the Fortifications at* Mardyke; *that his Wife's Name is* Butler, *and a near Relation of the D. of* Ormond; *therefore he is impatient to know what paſſes about the Proſecution of the laſt Miniſtry. That there is nothing now in* France, *except conſiderable and frequent Bankrupcies among the* Stock-Jobbers, *and an inexpreſſible Scarcity of Money.*

The laſt Letter from *Francia* to *d'Aulmay*, which was produced and read in Court, bore Date the 30*th* of *May*, *O. S.* and 10*th* of *June*, *N. S.* 1715. wherein having deſired him, *to ſend forthwith another Letter of Attorney, becauſe Mr.*

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Mr. Arthur *ſaid, that he had loſt that which was in his Hands*; he tells him, *Yeſterday in the Evening, being the Anniverſary of the Reſtoration of* Charles II. *there were here great Riots. Nothing was heard among the People, but Curſes againſt the preſent Miniſtry, and long live* James III. *and the Duke of* Ormond. *This being ſo publick, that it cannot fail reaching your Parts, I acquaint you with it, and aſſure you, that I am,* &c. P. S. *Mr.* Harvey *ſalutes you, and bid me tell you, that when there is any Thing new, if he cannot write to you himſelf, he will cauſe the Sieur* J. C. *to do it for him.*

A Letter dated *Auguſt* the 7*th*, *N. S.* 1715. wherein *d'Aulmay* tells *Francia, That the Indolence or Supineneſs he expoſtulates about, is only in Appearance*; *and he hopes that, with God's Bleſſing upon their Friend's good Cauſe, he will at laſt caſt his Adverſary, or gain his Suit*: *And that at leaſt no Succours or powerful Sollicitations ſhall be wanting.*

Three Days after, (*Auguſt* 10. *N. S.*) *d'Aulmay*, under the Name of *Payen*, bids *Francia* be *eaſy, and e're it be long, he'll be ſatisfy'd*; and acquaints him, *that the D. of* Ormond, *whom he calls the Chief of the Name of their Friend the Abbot*, (viz. Abbot *Butler*) *is preparing forthwith to return Home with his Friends*; *and that he* (d'Aulmay) *deſigns either to accompany him in his Voyage, or to be with him ſoon after.*

By another Letter of the 21*ſt* of *Auguſt*, *N. S.* *Payen* acquaints *Francia, That their Friend's* (the Pretender's) *Law Suit will ſhortly be ready for Trial*; *that his Wife's Relation* (*meaning the D. of* Ormond,) *had had two Fits of a* Tertian *Ague, of which the Bark had rid him*; *and that the* French *King had alſo been indiſpoſed for ſome Days, but without any apparent Danger.*

Three

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Three Days after, (*August* the 24th, *N. S.*) *Payen* desires *Francia* to acquaint Mr. *H*———, *That all his Friends are well; and that the* (French) *King's Health grows better and better; and desires him not to let one Post go without writing to him, and acquainting them with what passes in relation to the Cause of their common Friend.*

By another Letter without Date, *Payen* acknowledges the Receipt of a Letter of the 22d of *August*; answers *Francia's Charge of Negligence*; *owns that there are favourable Moments, which 'tis dangerous to let slip; but that 'tis Matter of Prudence to foresee all Inconveniencies, and to take proper Measures to surmount them. Which,* he says, *they are now doing; but that they are in a dismal Uncertainty about an Affair of the last Importance*; meaning the *French* King's Illness.

On the 3d of *September*, *N. S.* 1715. *Payen* acquaints *Francia* with the Death of the *French* King, and the Duke of *Orleans* being declared *Regent*; makes an Encomium upon the latter; and adds, *That the Journey to* Germany *would be proper enough; that their Measures have been* suspended, *but not broke, Things going on still better and better; that Notice is taken of his Good-Will; that the Duke of* O——— *and Lord* B——— *are in a private House, within a small half League of* Paris; *and that their Sentiments are right.*

Three Days after, (*September* the 6th, *N. S.*) *Payen* acquaints *Francia, That since the Abbot* Butler *has been in* France, *he has often been in the Country*; then advises him *to make use of a trusty Hand, other than his own, or his Son's; and also to send him a Key, or Cypher, of the principal Names, and to keep a Copy of it.* And tells him, *he sends inclos'd the Picture he has desir'd*; which is conjectur'd to be the Pretender's.

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On the 14th of *September*, *N. S. Payen*, in another Letter, tells *Francia*, *They knew already Part of what he writes, about their Friend's Law-Suit*, (meaning the intended Rebellion) *which, with God's Bleſſing, would ſoon end to his Satisfaction, or all Appearances would deceive them. And as for his own Cauſe, he can't forbear telling him, his Fate is very unhappy to have to deal with ſo diſhoneſt a Man.*

Three Days after, (*September* the 17th, *N. S.*) in a Letter *Anonymous*, but written with the ſame Hand with thoſe ſign'd *d'Aulnay*, or *Payen*, he complains of an *Epitaph* (on the *French* King) *which the D. of O—— had already ſhew'd him, and was by Gentlemen look'd upon as the ſpitting of Cerberus*; he adds, *That the Author of it may be dealt with according to his Deſerts; and his Inſolence attended with unexpected Conſequences. That the D. of O—— had, ſome Days before, a ſmall Fit of an Ague, which had no Conſequence.* And a Poſtſcript by another Hand, (ſuppoſed to be Abbot *Butler*'s) *deſires to be acquainted with the State of the Law-Suit of Mrs.* Barbara Br.

In a Letter dated at *Paris* the 25th of *September*, 1715, the Abbot *George Butler* expreſſes to *Francia*, the infinite deal of Pleaſure Mr. *d'Aulnay* has done him by *Francia*'s laſt Letter, *That Mr.* H—— *will ſoon be there. That the ſooner the better, becauſe they ſhould be together at the Vintage, which will be good, though the Wine loſs plentiful than good.*

Two Days before the Date of this Letter, (*viz. September* the 23d, *N. S.*) *Payen* wrote alſo to *Francia*, and therein *blames the Impatience of the Friends in* England; *bids* Francia *tell Mr.* H—— *by no Means to think of going over; that the*

the D. of O—— charges him expresly with what he writes, and desires Mr. Harvey *to stay. That this will give them all to understand, that this is not a Time to be Impatient, but more Resolute than ever. That 'tis pretended, there are at* Havre-de-Grace *two Ships loaded with Arms, which has alarm'd some People, but without Ground; for if that News be true, the Arms must be design'd as a Present to the King of* Persia. *That, after all, they must all of them recommend themselves to God, and hope they shall soon be quiet; they in* England, *after their wise Government has dissipated the Fears that disturb its Tranquillity; and they in* France, *by the paternal and indefatigable Care of the Regent, of which* Francia *may judge by the enclosed Lists of the Councils he had lately established.*

In another Letter dated the 27th of *September*, *Payen* tells *Francia*, *'Tis hard that all he has formerly written, cannot set his, and his Friends Minds at Rest; that he cannot tell more, and he thought so much was sufficient for a Man of Sense, like* Francia, *especially in an Affair of this Nature; that he will agree with him in it very speedily; and in the mean Time desires him to continue Writing, and his Zeal will be acknowledged by more than one Person.*

There were some other original Letters from *Payen* to *Francia*, stopp'd at the *Post-Office*, by Order of the Lord Viscount *Townshend*, and which were carry'd or sent to his Lordship unopen'd; but these Letters not being mark'd when taken, so that no Body could swear positively they were the same that were stopp'd, they were not produc'd in Court.

The King's Council having made proper Observations on the Guilt and ill Tendency of

these Letters; those for the Prisoner raised Objections to the Insufficiency of the Proof; and, among other Things, represented it as a Hardship, *That a Man's private Books and Papers should be seiz'd, and then turn'd as Evidence against him.* This being a Reflection on the King's Ministers, the Attorney-General would not suffer them to proceed; and both he and Mr. Sollicitor-General justify'd the Proceedings of the Government; and in particular, my Lord *Townshend*, who, they said, *was so far from deserving Censure for what he did in the Discharge of his Office, that he had deserv'd Censure if he had not acted as he did.*

Mr. *Hungerford* made a submissive Retreat; and then Mr. *Ward* suggested in Favour of the Prisoner, *That he was an Alien, and had never been naturaliz'd; and therefore could not be Guilty, in this Kingdom, of Treason against his* Natural Liege Lord, (*contra Naturalem Dominum,*) *as was mentioned in the Indictment.* Hereupon the King's Council offer'd to put the whole Matter upon that Issue, and to be contented with a *Special Verdict*, to be afterwards determin'd by the Twelve Judges. But though the Judges on the Bench were of Opinion, that the King's Council made a very fair Offer; yet the Prisoner's Council would not agree to a *Special Verdict*; and so proceeded to call and examine Evidence in Behalf of the Prisoner. In the first Place, *Simon Francia* depos'd, 'That his 'Brother, *Francis Francia*, was born at *Bour-* 'deaux in *France*;' which was confirm'd by the concurring Testimonies of one *Gonzales*, a Jew, whose Sister was Mother to the Prisoner; of Mrs. *Sirit*, who said, *That the Prisoner and she were born in the same Street in* Bourdeaux, *and that*

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that they were School-Fellows; and of another Perſon. *Simon Francia*, and one or two more Witneſſes, depos'd alſo, 'That they were ac-'quainted with the Priſoner's Hand; and that, 'to the beſt of their Knowledge, no Part of 'the *Copy-Book* of Letters was written by him.' His Council alſo alledg'd, 'That he was indiſ-'poſed with a *Rheumatiſm*, at the Time the 'ſaid Letters were ſaid to have been written, 'inſomuch that he could not ſtir for Three 'or Four Months. To prove this, Dr. *Cade* was called upon, and depoſed, 'That he attended 'the Priſoner only for ſixteen Days in *October* 'and *November*, 1714.' which was long before the Writing of the Letters produced in Court. To ſupport this Depoſition, one *Thomas Richard-ſon*, a Blackſmith, and a Neighbour of *Francia*, depos'd, 'That he knew the Priſoner very well, 'for he took about Thirty Pounds of his Mo-'ney, and us'd to go and ſit with him when he 'was indiſpos'd, which was for about Four or 'Five Months; that he heard him ſay at the 'Concluſion of the late Peace, *That the ſame 'was a ſcandalous one, and would ruin the Nation.* 'That he was much ſurpriz'd when he heard 'he was taken up by the Government; for he 'always took him to be a quiet, honeſt Man, 'and one who did not meddle in the Nation's 'Buſineſs; *for he always kept a Bottle of good 'Brandy, and once giving him a Glaſs of it, told 'him*, Here, *Vulcan*, drink a Health to King 'George.' On the other Hand, Mr. *Slaughter*, an Attorney, who was alſo call'd to the Priſoner's Reputation, depoſed indeed, 'That he 'had known him for about Five Years paſt, 'having had Occaſion to ſpeak with him about 'a Law-Suit; but that he took him to be a

'*Frenchman*; for he always spoke in Praise of 'the *French* King, and for the Interest of '*France*; and laugh'd at our Party-Divisions.

The Prisoner's Council endeavoured to set forth the Improbability of his carrying on the Correspondence with which he was charg'd, by producing two Witnesses, a Man and his Wife, who swore, 'That *Francia* having liv'd at their 'House, Letters were afterwards left for him 'there for several Years; and that sometimes 'three, four, or five Days past, before any Body 'call'd for the said Letters.' But as to this, the King's Council rightly took Notice, That *Francia* might receive other Letters, besides those that were carried to that House.

One remarkable Passage in the Evidence given in Behalf of the Prisoner was, That *Simon Francia*, the Prisoner's Brother, confronted the Lord *Townshend*, telling his Lordship: '*That he had made Offers to him; that if his Brother would become an Evidence against Mr.* Harvey, *he might be discharged.*' To this very Purpose, two Women were also call'd, who readily swore; the one, that '*she was under the Prisoner's Bed in* Newgate, *and heard Mr.* Buckley *say to him, If you won't swear against him,* (meaning Mr. *Harvey*) *we'll hang you*'; the other, '*That she was behind the Curtain in the Prisoner's Room, and heard Mr.* Buckley *speak Words to the same Purpose.*' But being both Women of no Reputation, the Court had little or no Regard at all to their Depositions. And indeed, besides the Improbability of their hiding themselves in such a Manner as not to be perceiv'd, either by the Turnkey in *Newgate*, who upon Oath declared, That Mr. *Buckley* came there at the Prisoner's Request; or Mr. *Buckley* himself acquainted the

Court with the Occaſion of his going to the Priſoner in *September* laſt, which was at *Francia*'s own Requeſt: 'That when he was there, the 'Priſoner made a Propoſal to him for ſuppreſ-'ſing the *Weekly-Paper*, call'd, *Shift Shifted*; and 'Mr. *Buckley* having acquainted my Lord *Town-'ſhend* with it, his Lordſhip thought it a Piece 'of good Service to the Government, to put a 'Stop to that ſcandalous Libel; and conſented 'to ſhew ſome Favour to Mr. *Flint*, the ſup-'poſed Author of it, for whom *Francia* had 'interceded. That Mr. *Buckley* took indeed 'this Opportunity to preſs the Priſoner to 'make an ingenuous Diſcovery; but that he 'us'd neither Threats nor Promiſes to make 'him ſwear againſt any Body.' All which was confirmed by the unqueſtionable Teſtimony of Lord *Townſhend*.

After ſome Debates betwixt the Council on both Sides, the Lord Chief Baron *Bury* gave the Charge to the Jury, concluding, *That if they were ſatisfy'd in their Conſciences, that the Priſoner at the Bar wrote and received the Letters produced in Court, they ought to bring him in Guilty of the Indictment, otherwiſe they ought to acquit him.*

By this Time it was about half an Hour paſt Ten in the Evening, and the Jury going out, returned about half an Hour, and delivered a Verdict of *Not Guilty*, to the great Surprize of the Generality of thoſe that were preſent at this remarkable Trial.

An Account of the Sufferings of those concerned in the Riot in Salisbury Court, *on the* 23d *and* 24th *Days of* July 1716.

IN a Collection of this Nature, we cannot think it very improper to record somewhat of an Affair so extraordinary, and what may be said (though not indeed directly) to have some Relation to the Rebellion; in regard it shews the Temper and Spirit of the People at that Time, in Favour of the Rebellion, and those who suffer'd for it.

This, though it had been but too visible before, did apparently very much increase after the Rebels were brought up to *London*, and especially after some of them had suffer'd; the Reason of which was plain, so great a Number of the better Sort of them fill'd the several Gaols in *London*, that they drew great Numbers of their Friends and Acquaintance to see them, who related their Case when they came from them, in the most favourable Manner, founded upon the Accounts given of themselves, and their pretended hard Usage. This drew Pity from some, who became their Friends, as others, and those a very great Number, did out of Zeal and Principle; so that the Poyson spread a pace; and it may justly be said, that this was the Spring from whence a great deal of Disaffection flow'd, not only through the City of *London* it self, but also into distant Countries.

Many

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Many Outrages had been committed by the Mob, through the Encouragement they receiv'd from ſome, and the Remiſneſs of others, who thought themſelves unconcern'd: And this (which was the beſt Reaſon I could ever learn) was the Occaſion of ſetting up ſome Communities or Aſſemblies, call'd *Mug-Houſes*; where ſome Numbers of zealous and well-affected Perſons met, not only with Deſign to teſtify their Affection and Loyalty, by meeting together for the Benefit of Converſation, but to ſally on Occaſion, and diſſipate and diſperſe ſuch Mobs, as were pernicious to the Peace of the Government, in diſtinguiſhing their Abuſes to thoſe, who had the Character of being zealous in the Intereſt of King *George*.

One of the chief of theſe was erected in *Salisbury-Court*, kept by one *Robert Read*, who had often taſted of the private Reſentment of the diſaffected Party; but that in a more particular Manner on the 23*d* and 24*th* of *July*, 1716. On the former of theſe Nights, a Mob aſſembled together firſt in the *Temple*, occaſion'd by the Appearance there of one Mr. *Butter*, a young Man, and one of the Rebel-Priſoners, who had been pardon'd by the King; and being got together, they march'd into *Fleet-ſtreet*, ſome among them naming the *Mug-Houſe* in *Salisbury-Court*, where there had been ſome Diſturbance a few Nights before. As they went down *Fleetſtreet*, they drew up before the Sign of the *Boar's-Head*, a publick Houſe, noted for its good Will and Loyalty to King *George*, as well by the Zeal of the Perſon who kept it, as the Reſort of ſuch kind of Company to it. Here they diſcharged a Volley of Stones and Dirt at the Windows, and did ſome Damage, and then

went

vent toward *Salisbury-Court*; but whether this was the principal Body of the Mob, or that they join'd some other, was not certainly known; the Issue was, that they fell upon the *Mug-House* there, after several Consultations to pull it down; but this was prevented for that Night, by Means of the Assistance which several well affected People gave to the Master thereof. There was indeed two Constables, with a numerous Watch; but these were sworn rather to have abetted the Mob, than to have dispersed or discouraged them; for which one of them, named *Johnson*, very narrowly escaped a severe Prosecution.

The next Day, the Mob assembled again very early, and fell to breaking the Windows, their Cry being all the while, *High-Church and* Ormond; *no King* George, *no Hanover*; *down with the Mug-House*; *damn the* Presbyterians, *&c.* This continued till about Eleven a Clock, the Constable and Watch, as has been said, not doing or endeavouring to do their Duty, to disperse them; when the Danger growing great, the Master of the *Mug-House*, and a Grenadier, who, with some others, had been in the House all Night for its Security, sally'd upon them, the former with a Blunderbuss, and the latter with his Bayonet in the Muzzle of his Piece, and drove them into *Fleet-street*; but the Mob rallying again, push'd them to the *Mug-House* Door, (a Constable in the mean Time having read the Proclamation) and their Captain, one *Daniel Vaughan*, at the Head of them, with a Quarter-Staff in his Hand; at which Time, after fair Warning given to keep off, Mr. *Read* fir'd his Blunderbuss, and shot the said *Vaughan* dead. But this was so far from dispersing the Mob,

Mob, that they now fell on with greater Force and Vigour, assaulted the House, enter'd it, and broke and destroyed all they could lay their Hands on; the Remains of such Goods as they could not otherwise destroy, they made a Bonefire before the Door to consume. In the mean Time the Persons in it, to the Number of Seven or Eight, made a Barricade at one Pair of Stairs Head, to secure their Lives; which, no Doubt, they had lost, had they not been able to repulse the Mob in several Attacks made to gain the Stair Head.

The Mob, and those who seem'd to favour their outrageous Enterprize, were so far from dreading the Consequence of what they had done, that they fell presently upon calling the Master of the *Mug-House* to an Account for the Death of the Captain of the Mob; and a Jury was so pick'd for the Coroner's Inquest, that the Coroner could not, by any Methods or Persuasions, though he repeated the Laws to them in the most earnest and expressive Terms, prevail with them to give any other Verdict than *wilful Murder*, which in Conscience he could not record; and therefore prudently bound them over to the Sessions, to give their Verdict there; while the Grand Jury, upon a Bill preferr'd to them, soon found the same *Ignoramus*; so he was indicted at the ensuing Sessions, (*viz. Sept.* 5.) upon the aforesaid Inquisition; but after a very long Trial, upon plain and full Evidence, he was acquitted.

In the mean Time, particular Notice having been taken of some of the *Rioters*, whilst they were only intent upon Mr. *Read*'s Prosecution, and not dreading their own, Five of them were seiz'd, and committed to *Newgate*, viz. *John Love*,

Love, *Thomas Bean*, (Servant to Mr. *Cassels*, and Mr. *Carnegy*, two of the Rebel-Prisoners in *Newgate*) *George Purchase*, *Richard Price*, and *William Price*, who were try'd the same Sessions, upon the Statute of the 1*st* of King *George*, which makes it Felony without the Benefit of the Clergy, to *demolish*, *or begin to demolish any Dwelling-House*, &c. The Fact, in the Manner it has been related, was fully and plainly proved upon them; and, after a very slight Defence, they were all found Guilty; and the same Sessions, with the rest of the Malefactors condemn'd, receiv'd Sentence of Death, and were accordingly, on the 21*st* of *September* following, executed at *Salisbury-Court* End, in *Fleet-street*.

They were all very young Men, and indeed were much to be pitied, being rather instigated by others, than acted by their own Will; little considering (as they declar'd themselves) of the Unlawfulness and ill Consequences of what they did; and had not the absolute Necessity of making an Example, to deter and prevent such dangerous Practices for the future, been urg'd against them, their Case had raised such a general Compassion, that, in all Likelihood, they had not suffer'd; for it is certain, the Prince, who was then Regent, had such an Inclination to spare them, especially two of them, that no other Motive could have determin'd their Execution: Hard Fate, to fall under the Sense of so miserable a Construction.

As to the Fact they suffer'd for, they confessed in general, that they were guilty of it; but insisted that they were innocent of the Law in Force to punish it with Death. They were very much lamented by those who saw them pass to Execution, and a more numerous Con-

course

course was hardly ever seen upon the like Occasion. They said little at the Place of Execution, but behav'd themselves with Humility and Decency, and died, in respect to their Years, very penitently and devoutly. *Bean*, in a Paper which he gave the Ordinary of *Newgate*, cleared the two Gentlemen he had serv'd in *Newgate* of knowing any Thing of his going upon that Affair. As he past to Execution, he gave a Paper, which he call'd his last Speech, to a Gentleman his Friend at *Fleet-bridge*; but before, or by that Time he came to the Gallows, a Speech, which had been made for him, was given him, of which he read a Part, but was interrupted; and therefore gave it to a former Companion of his, who sent it to be printed; but his genuine Speech beforemention'd is as follows, which the Author of this History has under his own Hand-Writing.

A COPY of Thomas Bean's *Paper.*

'BEING now to make my Exit from the Stage of this World, I think it proper to acquaint all honest People, and particularly my beloved oppressed Friends of the true Reform'd Church of *England*, that I was always brought up in the Bosom of the said Church, (though an unworthy Son thereof.) That I have always wish'd, with a most fervent Zeal, for the Prosperity thereof, and do now die in the Communion of the said Church. I shall not inlarge upon the Hardship of my Trial, to which I was hurried without a Moment's Notice, and not so much as *Subpœnas* granted to me, when demanded, to summons my Friends to my Trial; nor up-

'on

on the Wickedness, Falshood, and Malice of the Evidence that swore against me, &c. I shall only put you in Mind of a Fable of the Crows and the Pigeons, related in Fable 306 of Roger L'Estrange's Book, Pag. 358.

THERE happened a Suit in Law between the two Families of the Crows and the Pigeons; but for Quietness sake, they agreed upon an Order of Reference, and the Kite was to be Arbitrator; the Cause was heard, and the Judgment given for the Crows.

MORAL.

ASK my Brother if I am a Thief, one Criminal upon the Bench, will be sure to bring off another at the Bar.

REFLEXION.

INnocency is almost sure to be worsted, whenever it may be abus'd with Security and Advantage: Guilty, or not Guilty, is not so much the Point in the Case here of the Crows and Pigeons; for the Matter in Question is the Person or Party, not the Fact; the one's in the Plot, let him be never so innocent, and the other is as white as the driven Snow, let him be never so criminal. There are Clubs, Cabals, Ignoramus's, false Witnesses among Men as well as among Birds, with all the pompous Formalities of countenancing Fraud and Corruption with the sacred Name of Justice: Set a Kite upon the Bench, and 'tis Forty to One he'll bring off a Crow at the Bar. Briefly, there is nothing more in the Iniquity of this Fiction, than what we see every Day made good in common Business and Practice. 'Tis but dressing up a Bird of Prey in the Cap and Furrs, to make a Judge of him, and so for a Knight of the

the Post; 'tis but dubbing him with a Title of King's Evidence, and the Work is done; for in these Cases, Judge, Jury, and Witnesses, are all of a Piece.

Please the World to judge how this Moral is applicable to the present Case of us, poor, tender, young Lads. One may easily guess who the Kite, who the Crows, (where some *Gott *upon a curs'ed* *Hasell *Stump, and others perch'd upon a bloody, deceitful broken* Reed) *and who the poor, harmless, oppress'd* Pigeons *are? So wishing Prosperity to the true Church of England, and to the Members thereof: I bid you all adieu, and wish you may see better Times.*

This is a true Copy of my own Hand-writing, that I intend to give the Sheriff.

Sept. 21. 1716. Thomas Bean.

That Paper which was given to him, and of which he read a Part at the Gallows, though it is scarce pertinent, yet to gratify our Readers, is here inserted.

'I Am brought hither, by God's Permission, *Dear Fellow-Christians and Countrymen*, against the ancient Laws of this Kingdom, and the undoubted Liberties of this once free People, by Virtue of a new pretended Law, to suffer an ignominious Death, though nothing worthy of Death, even according to this new Constitution, could have been prov'd upon me, had I had but the Right of defending my self allow'd me, which we *Englishmen* have hitherto so much gloried in, and for which we ordinarily appeal to God and our Country, as I do most

* The Names *of Two of the Witnesses against him.*

'moſt ſolemnly now appeal to both, in this my 'laſt Hour:

'Beſeeching the Almighty God, that he will 'not lay this Sin to the Charge of thoſe, who 'have been inſtrumental in bringing me to 'this unexpected End; and that he will not re- 'member the Sins of my Youth, nor enter in- 'to Judgment with me for my manifold Tranſ- 'greſſions againſt his moſt holy Law, whereby 'I have merited not only temporal but eternal 'Death, and brought Diſhonour upon the holy 'Religion which I profeſs, and which I am now 'going to Seal with my Blood.

'It was the Zeal that burn'd in me, to hear 'of certain diabolical Healths publickly drank 'in Defiance of all Law, as well as Religion, 'and particularly, *Of Confuſion to the Church of 'England*, with helliſh Reflections both on the 'Living and on the Dead, which kindled that 'Fire in me, which would have been hard for 'Men of more Years and Underſtanding to have 'governed, under ſuch great and repeated Pro- 'vocations.

'God be merciful to me, and to all who gave 'them, and who have promoted thereby this 'Scene now before your Eyes; and grant that 'all may be waſh'd away in the Blood of Chriſt, 'into whoſe Bowels of Love and Mercy I caſt 'my ſelf in the Fellowſhip of all faithful Peni- 'tents, who are at Reſt with him.

'I die an unworthy Member of the Church of 'England, as by Law Eſtabliſh'd, which God 'for ever preſerve; and I proteſt againſt *Popery*, 'and all Antichriſtians whatſoever, and all U- 'ſurpations both in Church and State. I ſay 'again, God for ever preſerve the Church of

'*England*,

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'*England*, and make her glorious, that all who 'differ from her may be converted to her.

'I heartily pray, that God would look upon 'this once flourishing, but now miserable di-'stracted Nation, and heal the Breaches thereof 'by the *only Expedient which remains, and which 'is in the Hands of God to fulfil*; baffling all the 'Designs and Devices of wicked Men and An-'gels against Truth, Justice, and Peace.

'I beg of you all to help and assist me in this 'Hour of Death, with your fervent Prayers to 'the Father of Mercies, that I may be streng-'thened to overcome it, through the Blood of 'the Lamb, and have a Part in the Resurrection 'to eternal Life. Lord Jesus, have Mercy on 'my Soul; Lord Jesus, receive my Spirit. *A-'men*, Lord Jesus.

A true Copy of the Petition of Thomas Bean, *which was presented, or intended to be presented, by his Mother to the Prince of* Wales, *Prince Regent*, &c. *a little before his Execution.*

To His Royal Highness *George* Prince of *Wales*, Guardian of this Realm, and his Majesty's Lieutenant within the same. The humble Petition of *Thomas Bean*, now lying under Sentence of Death in the Prison of *Newgate*,

Most Humbly Sheweth,

THAT your Petitioner having been a long Time out of Service, was at last (about a Month before the said Riot) employed by some of the Rebel Prisoners in Newgate, to go of their Errands, (which he the more readily accepted of, because he had no other Means to maintain his Aged and Sickly Mother, although, to his Misfortune, he finds that it

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has caus'd a great Prejudice against him) *and that very Day being sent out about his Master's Business, without any Design to promote, or indeed any Knowledge that there was a Riot, he unhappily fell in among the Mob, to see what the Matter was; but without any Design of assisting them.*

That being a young Lad, not above Seventeen Years of Age, he knew nothing of the Act of Parliament, or that it was any Crime against the Government to be among such a Multitude; neither did he remain long there, nor in the least assaulted or entred the House, or meddled with breaking any of the Goods, but returned Home before the Height of the Action, and before the House was broke open, or the Proclamation read; neither was he otherwise concern'd in the Riot, than by taking up a small Piece of the Sign that was kick'd about by the Mob, and carrying it in his Hand along the Street: Neither did Mr. Collins, *or any other credible Evidence, swear that he assaulted the House; only one* Gott, *whom he has Reason to apprehend, had some private Pique against him, swore, that he saw him fling Stones at the Windows; which he declares, upon the Word of a dying Person, to be false; and his taking up the Piece of a Sign was accidental, and without any Thoughts of Harm, for which he is now to die.*

That your Petitioner was never before Guilty, either by Word or Deed, of any Crime or Misdemeanour against his most sacred Majesty King George, *the Government, or indeed any private Person, to his Knowledge; and if your Royal Highness will be mercifully pleased to spare his Life this Time, he doth solemnly promise that he will, for the Remainder of his Days, behave himself as a most dutiful Subject; what he has already suffered by his Lord and long Imprisonment, being a sufficient Warning to him for the future.*

Your

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Your Petitioner therefore moſt humbly implores your Royal Highneſs's Mercy; hoping that, out of your Princely Goodneſs and Clemency, you will be pleaſed to compaſſionate his tender Age, and Ignorance of the Laws, and ſave the Life of a Perſon, who will not fail to make an Atonement for this his firſt Fact, by his future Behaviour and Fidelity.

And your Petitioner (as in Duty bound) will ever pray for the Proſperity of his moſt Sacred Majeſty King George, *and all his Royal Iſſue.*

There was, beſides theſe, one *Naſh*, try'd and convicted upon the ſame Statute; but afterwards pardon'd. And one *Delandre*, a Watchmaker in *Fleet-ſtreet*, who was convicted for abetting the Mob in their Deſign of pulling down the *Mug-Houſe*; which is the moſt that can be ſaid of this Affair.

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An Account of thoſe who ſuffered by Attainder, Fine, Impriſonment, &c.

A Liſt of the Noblemen and Gentlemen attainted of High Treaſon, in the Second Seſſion of the preſent Parliament.

JOHN *Earl of* Mar.
William Murray, *commonly called Marquiſs of* Tullibardine.
James *Earl of* Linlithgow.
James Drummond, Eſq; *commonly called Lord* Drummond.

Theſe Four ſtand Attainted from and after the 19*th of January*, 1716. *in a particular Act of Parliament by themſelves.*

George *Earl* Mariſchal.
William *Earl of* Seaforth.
James *Earl of* Southesk.
James *Earl of* Panmure.
William *Viſcount of* Kilſyth.
James *Viſcount of* Kingſton.
Robert *Lord* Burleigh.
Kenneth *Lord* Duffus.
James Ogleby, *commonly called Lord* Ogleby.
William Sutherland, *Laird of* Roſs, *Brother to the Lord* Duffus.
Lieut. Gen. George Hamilton.
Major Gen. Tho. Gordon, *Laird of* Achintowel.
Col. John Hay, *Son to the Earl of* Kinnoul.
Major Will. Clepham.
Sir David Threepland, *of* Fingask.

Sir

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Sir Hugh Paterſon *of* Bannockbourn.
Sir Donald Mac Donald *of* Slate.
Sir John Preſton *of* Preſton-Hall.
Sir John Mackenzie *of* Cowle.
Mr. James Malcolme *of* Grange.
Mr. John Stewart *of* Innernytie.
Mr. Alexander Robertſon *of* Strowan.
Mr. John Walkingſhaw *of* Scots-toun.
Mr. John Mackenzie, *Son of* Delvin.
George Mackenzie *of* Ballamukie.
Alexander Mackenzie *of* Fraſerdale.
Roderick Mackenzie *of* Fairburn.
Alexander Mackenzie *of* Applecroſs.
Donald Mackenzie *of* Kilcowie.
John Mackenzie *of* Avach.
Alexander Mackenzie *of* Dachmalauch.
John Sinclair *Eſq*; *commonly Maſter of* Sinclair.
Alexander Farquarſon *of* Inveray.
Colin Campbel, *Laird of* Glendarowl.
John Cameron, *Younger, of* Lochiel.
James Stirling *of* Kier.
William Grahme *of* Duntroon.
Robert Campbel, *alias* Mac Gregor, *commonly called* Robert Roy.
John Oliphant, *late Baiſſe of* Dundee.
Rob. Stewart *of* Appin.
Hugh Roſs, *Laird of* Clava.
John Mac Dougal *of* Lorn.
John Grant, *Laird of* Glenmorriſon.
John Mac Kinuin, *Laird of* Mac Kinuin.
Rotherick Chiſholm *of* Strathglaſs.
Alexander Mac Donald *of* Glencoe.
John Mackra *of* Davacharty.
Alexander MacDonald, *Laird of* Glengary, *afterwards pardoned.*
Ronald Mac Donald, *Captain of* Clan Ronald.

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These last named are contained in one Act of Parliament, if they did not surrender themselves before the Last of June, 1716. *Stand Attainted of High-Treason from and after the 13th of* November, 1716.

By one other Act, *Tho. Forster*, Esq; Brigadier *William Mackintosh*.

As for the Attainders of the late Duke of *Ormond*, and late Viscount *Bolingbroke*, &c. They were previous to the Rebellion, and so not at all necessary to be inserted here.

The Chief of those who suffered in other Respects, are such as follow.

Expell'd the House of Commons, and the former ordered to be prosecuted for High Treason, but he fled beyond Sea, } *John Carnegy*, Esq; *Lewis Pryce*, Esq;

Colonel *Paul*, who had a Company in the First Regiment of Foot Guards. He was seiz'd by a Messenger the 2*d* of *September*, 1715. on an Information, for encouraging the enlisting of Men for the *Pretender*'s Service; the Circumstances of which, are given in Evidence on the Trial of *Joseph Sullivane*, and may be seen there. He was committed Prisoner to the *Gatehouse*, and lay long under Confinement, but in the End was dismissed; there being no doubt, but he made his Innocence appear; for he not only held his Command, but was introduced, after his Releasement, to kiss the King's Hand.

On the 4*th* of *September*, *William* Lord *Powis*, by some called Duke, and Marquis of *Powis*, a Papist; was taken into Custody of one of the King's Messengers, and ten Days after committed to the *Tower* for High Treason, where he

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he lay till the 27th of *May*, when he was admitted to Bail without Tryal. The Charge in general said to be alledged against him was, issuing Money for the Service of the Pretender; but no Occasion of Proof offering, the true Reason of his Commitment rests a Secret.

On the 21st of *September*, *George* Lord *Landsdown* was seiz'd by a Messenger, assisted by a File or two of the Guards; and on the 26th committed a Prisoner in the *Tower*, and a Bill of Indictment for High Treason was found against him; but he was discharged by Pardon pass'd the 8th of *February*, $17\frac{16}{17}$.

The same Day *George* Viscount of *Duplin*, Son and Heir Apparent to the Earl of *Kinnoul* of *Scotland*, and Baron of *Pedwarden* in *England*, was likewise seiz'd by a Messenger, and the 13th of *October* committed to the *Tower*; but no Prosecution commencing, he was admitted to Bail on the 26th of *May* following.

William Earl of *Jersey*, was likewise at that Time taken into Custody of a Messenger, at the House of the Bishop of *Rochester* at *Peckham*; but nothing appearing against him, he was enlarged soon after.

On the 24th of *September*, *Edward Harvey*, *Sen.* of *Comb*, in the County of *Surrey*, and Member of Parliament for *Clithero* in *Lancashire*, was taken up by a Messenger. A Message had been sent to the Commons by a Secretary of State, to acquaint the House, That the King having just Cause to suspect, that Sir *William Windham*, Bart. Sir *John Pakington*, Bart. *Thomas Forster*, Esq; *John Anstis*, Esq; *Corbet Kynaston*, Esq; and *Edward Harvey*, Esq; were engag'd in a Design to support the intended Invasion, desiring the Consent of the House to apprehend them;

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which they immediately complied with, by ordering an Addreſs to be drawn up to that Purpoſe, and Warrants were forthwith iſſued. On the 25*th*, Mr. *Harvey* was examin'd before a Committee of the Privy Council at the *Cockpit*, where he at firſt reſolutely deny'd the Charge againſt him; but ſome Proof, as was generally ſaid, appearing, that he was at leaſt privy to the Deſign of carrying on the Conſpiracy; he was remanded to the Meſſenger's Houſe, where that Night he ſtabb'd himſelf with a Knife, and was found the next Morning early, groaning and weltring in his Blood in Bed. He lay long ill of his Wound, and a Fever that attended it, and was on the 3*d* of *May* following committed to *Newgate* for High Treaſon; but bailed from thence on the Expiration of the Suſpenſion of the *Habeas Corpus* Act.

John Anſtis Eſq; Member of Parliament for *Launceſton* in *Cornwal*, was, in Purſuance of the aforeſaid Order, and at the ſame Time, ſeized by one of His Majeſty's Meſſengers, in whoſe Cuſtody he was kept till *January* following, and then, by the Favour of the Government, admitted to Bail.

Sir *John Pakington*, Bart. Knight of the Shire for the County of *Worceſter*, was taken at his own Houſe in that County, from whence he never ſtirred, tho' he had Information of the Order for ſeizing him. He was brought Priſoner to *London* on the 1*ſt* of *October*, and on the 4*th* was examined before the Council, where he behaved himſelf with Reſpect and Decency, and gave very ſatisfactory Anſwers to the Queſtions put to him. What was publickly ſaid to be alledged againſt him was, his Name being mentioned in a Liſt among many others, who were known

known to be diſpoſed to favour the Rebellion; and his Anſwer to be in Subſtance, that it would be very hard, a Man ſhould be accountable for having his Name written in ſuch a Liſt, unleſs it were proved to be done by his own particular Order, or Approbation; which he ſaid he was wholly ignorant of. It appears that what he ſaid was ſatisfactory, for he was at that his firſt Examination honourably diſcharged.

Sir *William Windham*, Bart. Knight of the Shire for the County of *Somerſet*, one of thoſe mentioned in the aforeſaid Order, ſurrender'd himſelf *October* the 3*d*. The Order for ſeizing him was diſpatched to his Seat at *Orchard Windham*, in the aforeſaid County, the very Day it was iſſued, by Colonel *Hurſt* of the Foot Guards, who had with him a Meſſenger, where they arrived the Day following very early in the Morning. It was with ſome Difficulty that they got Admittance to Sir *William*; but pretending to have Letters of Importance to him, it effected their Purpoſe. Sir *William* had the Preſence of Mind to diſſemble his Surprize, deſiring no Noiſe might be made to frighten his Lady, who was with Child: The Colonel thought this very reaſonable to comply with, ſearched his Pockets, and ſeized a Bundle of Papers, ſaid to be of great Conſequence, and permitted him to go and take Leave of his Lady; which Opportunity Sir *William* made uſe of to eſcape. Colonel *Hurſt*, having directed the Meſſenger to ſtay at *Orchard Windham*, till farther Orders, poſted to *London* to give the Government an Account of what was done: They were well pleaſed with the Papers he had ſeized, but regretted extremely that their Priſoner had eſcaped; and ordered a Proclamation to be iſſued for apprehending

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heading him, with the Reward of 1000 *l.* Sir *William* finding himself pursued by this Proclamation, as well as by several Messengers, who were out in Pursuit of him; surrendred himself to the Earl of *Hertford*, his Brother in Law, Captain of the Life Guard, on the 3*d* of *October* following, who delivered him into the Custody of a Messenger: Three Days after, he was examined at the Council Board, and was committed to the *Tower*; where he remained a Prisoner till the 18*th* of *June*, 1716. and was then, after considerable Opposition, admitted to Bail at the *King's Bench Bar* at *Westminster*. He appeared the First Day of Term, and was continued on his Recognizance, there being Matters of Misprision of Treason found against him; but after the Lord *Landsdown*'s Pardon, his Bail was dismis'd.

Thomas Forster, Esq; the 5*th* Person mentioned in his Majesty's Message to the Commons, became General of the Rebel Army in *England*; and *Corbet Kynaston*, Esq; the 6*th*, fled from his Habitation for a Time, but afterwards came in, and was admitted to Bail. The former, after a long Confinement in *Newgate*, made his Escape, and got over to *France*, and was Attainted as before.

On the First of *October*, *Nicholas* Earl of *Scarsdale*, was taken into Custody of a Messenger, assisted by a Detachment of the Guards. He was confined to his own House for some Days, and on the 12*th* following was sent Prisoner to the *Tower*; where he remained till the 26*th* Day of *May* following, and was then admitted to Bail.

The 28*th* of *September*, Mr. *Ambrose Crawley*, an eminent *Iron* Merchant, Son to the late Sir *Ambrose*

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Ambroſe Crawley, was apprehended by a Meſſenger, on Suſpicion of having favoured the Rebellion; but upon Examination was, on the 1ſt of *October*, diſcharged from his Confinement.

The ſame Firſt of *October*, Mr. *Ozinda*, Keeper of the *Chocolate* Houſe near St. *James's* Gate, was committed to *Newgate*, on Suſpicion of favouring a traiterous Correſpondence againſt the Government; but was after releaſed upon giving Bail.

About the ſame Time, Mr. *King*, an Undertaker, and *Francis Lewis Francia* a *Jew*, were likewiſe ſent to *Newgate*, on Suſpicion of treaſonable Practices; the former was ſoon after releaſed, but the latter tried at the *Old Bailey*, and acquitted, as has been ſaid.

The latter End of *September*, Sir *Richard Vivian*, Bart. was ſeiz'd at his Houſe in the Country; the Occaſion of which, as likewiſe of ſeizing ſome others in that Country, has already been mentioned in the Courſe of this Work. About the ſame Time the Lord *Dunbar*, and Sir *Marmaduke Conſtable*, both Papiſts, were ſeized in the *North*, and brought Priſoners to *London*; but in a little Time diſmiſſed upon Bail. They were ordered to be ſeiz'd with others actually engaged in the Rebellion, who were too watchful for the Meſſengers in getting out of the Way; but much better had it been for many of them to have been in their Caſe.

About the Beginning of *October*, *N. S.* the Lord *North and Grey*, who for ſome time had reſided at the *Hague*, and left that Place on Pretence of going to *Rotterdam*, to receive the Sacrament in the *Engliſh* Church there; but proceeding to *Bruſſels*, and deſigning, as 'twas judged, to go farther, Mr. *Lawes*, the *Britiſh* Secretary

Secretary there, who was before hand adviſed to have an Eye upon him, cauſed him to be ſeized; but upon ſome Aſſurances given by his Lordſhip of harbouring no ill Deſign, he was a few Days after ſet at Liberty.

On the 11th of *October*, *George Dormer*, Writer of a News Letter, who ſucceeded Mr. *John Dyer* in that Method; having been a little too free in his Accounts of the Rebellion, and the State of Affairs, was taken into Cuſtody of a Meſſenger, who likewiſe ſeized ſome of his Papers. About 8 Days after, being examined at the Secretary's Office, the *Oath of Abjuration* was tender'd to him, but he refuſed to take the ſame, and acknowledg'd himſelf to be a Papiſt, and was accordingly convicted as ſuch.

The 14th of *December*, Sir *Coppleſton Warwick Bampfylde*, Knight of the Shire for the County of *Devon*, againſt whom a Warrant had been iſſued to apprehend him, ſurrendred himſelf to one of the King's Meſſengers, and was ſome little Time after admitted to Bail. There were likewiſe Warrants againſt ſome others, who were Members of the preſent Parliament; but on ſurrendring themſelves, they were immediately diſcharged.

The ſame Day *Richard Jones*, frequently called *Gun Jones*, againſt whom a Warrant had long been iſſued, on Suſpicion of High Treaſon, was ſeiz'd by a Meſſenger, at the *Fountain Tavern* in the *Strand*, and continued in Cuſtody till the Expiration of the *Habeas Corpus* Act. The Matter againſt him was a Suſpicion of being privy to the intended Inſurrection, and of aſſiſting with ſome Arms.

I omit many who were taken up and puniſh'd for oppobrious Words ſpoken at that Time againſt the Government, as well as for Printing and

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and Publiſhing ſeditious Papers and Pamphlets, or other ſmaller Articles of Diſloyalty, &c. as not eſſential to the Rebellion it ſelf.

Seized at Oxford.

Captain *Halſtead*,
Mr. *Spelman*,
Mr. *Wilſon*,
Mr. *Kelley*,
Mr. *White*,
Mr. *Bourk*,
Mr. *Loyd*,
Tho. Dalſgrove,
John Clarke,
Tho. Todd,
William Hughes.

} Theſe were afterward diſcharged, ſome upon Bail, others for want of Proſecution.

At the Bath.

Col. *Landſdown*,
Capt. *Doyle*,
Capt. *Sinclair*,
Sir *Geo. Brown*,
Mr. *Macartney*,
Mr. *Dun*,
Mr. *Mackdonnel*,
William Hibbert.

} Theſe were afterwards diſcharged, ſome upon Bail, others without Proſecution.

Here was ſeized likewiſe Sir *William Swinburn*, Bart. of *Capheaton*, in the County of *Northumberland*, a Papiſt; who died in the Cuſtody of a Meſſenger, or at leaſt ſome few Days after he was releaſed.

One *Mackenſie* was try'd at *Wincheſter*, the *Summer* Aſſizes 1716. for enliſting Men for the *Pretender*, in Order to carry on the Rebellion, but acquitted.

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The following Persons were taken up and committed to York *Goal, upon Suspicion of having fled from* Preston.

Francis Simpson, Servant to Lord *Derwentwater*.
William Willson, Servant to Mr. *Collingwood* of *Eslington*.
George Greensword, Servant to Capt. *John Shastoe*.
Edmund Synnot, Servant to Mr. *John White*.
William Fraser, Servant to *John Mackleane*.
John Leadbitter, a Husbandman.
John Willson, a Day Labourer.
John Henderson, Servant to Mr. *Talbott*.

} These were afterwards discharged.

There was likewise committed to this Goal, one *Christopher Small*; He had been secured at *Birdlington*, (where he publickly said he was for King *James the Third*,) and so was suspected of designing to go to the Rebels. It appeared afterwards, that this Man had fled from *London*, where he had left his Wife and Children in a mean Condition, to avoid his Creditors, and had brought away her Cloaths, Plate, *&c.* which were seized with him. He was afterwards discharg'd.

Executed in *London*.

Joseph Silver, alias *Sullivane*.
Felix Hara.
Robert Whitty.
John Dorrel.
William Kerr.
John Gordon.

} These were for the Conspiracy leading to the Rebellion.

James

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James Earl of *Derwentwater*.
William Viscount of *Kenmure*.
Col. *Henry Oxburgh*.
Richard Gascoigne.
John Hall.
William Paul.

Died in *Newgate*.

David Drummond of *Undermeath*.
James Swinburn.
Richard Butler.
D. Kennedy
Geo. Gibson of *Stonecroft*.
John Toole.
Mr. *Skelet*, Steward to Sir *Francis Anderton*.
J. Foiley.

Died in Custody of a Messenger.

James Stewart.

Executed at *Lancaster*.

George Mackintosh.
Hercules Derham.
Donald Robertson.
Robert Crowe.
} 18th of February, 1715.

Cap. *Tho. Bruce*.
Tho. Shuttleworth.
John Winckley.
William Charnley.
Richard Hodgson.
} 3d of October, 1716.

Died in Goal at *Lancaster*.

William Selby, Aged 91.
Far. Smith.
Lacklan Mac Pherson.
Tho. Smith.
John Gordon.
Angus Mackintosh.
John Mac Gillivray.
Farquar Mac Gilliveay.
Thomas Mac Pherson.
Finley Mac Intintosh.
John Macdonnel.
Andrew Smith.
John Fenwick.
Evan Mackintosh.
Mat Jenkinson, Lord *Derwentwater's* Coachman.

John

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John Fiſher.
George Turner.
Alex. Mac Queen.
David Patterſon.
Farquar Mac Gillivray.
William Morris.
Allen Mackdonnell.
William Mac Pherſon.
John Kinady.
Evan Mackdonnell.
John Mac Queen.
Donald Mackintoſh.
Donald Mackintoſh.
Donald Mac Gregor.
Donald Mackintoſh.
Donald Read.
John Robertſon.
John Mac Gregor.
John Robertſon.
Alex. Smith.
Lewis Mac Faile.
William Mac Donald.
Alex. Smith.
John Mac Donald.
Donald Mac Gillivray.
Donald Clark.
Alex. Robertſon.
James Smith.

Went to *Leverpoole*, from thence for Tranſportation.

John Wilde.
David Mitchell.
John Newton.
John Forbes.
Alex. Forbes.
John Bourn.
Iſaac Chambers.
Henry Monrow.
Alex. Cameron.
Charles Strahan.
Patrick Cummin.
Rotherick Macdonnell.
Peter Robinſon.
William Woofele.
George Dickenſon.
James Swinney.
Ralph Sprunſton.
George Hodgſon.
James Malone.
Charles Lunden.
John Mackleam.
John Stewart.
Archibald Macklaoklan.
Alex. Stuart.
John Robertſon.
Robert Atkinſon.
Malcolm Mac Gregor.
James Mac Gillivray.
Duncan Farquarſon.
John Glaſs.
Hugh Frazer.
Donald Stuart.
Alex. Stuart.
Duncan Ferguſon.
Malcoſin Malcolm.
James Robertſon.
John Keas.
John Mackenſie.
Donald Robertſon.
Duncan Robertſon.
Dougall Stuart.

John

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John Mac Levan.
Donald Mac Dirmed.
Jo. Campbell.
Duncan Campbel.
Jo. Mac Kingie.
Donald Cameron.
Alexander Leaſlie.
David Patterſon.
Henry Macdonald.
Neill Stuart.
Adam Robertſon.
Duncan Toſh.
John Robertſon.
Duncan Mac Gregor.
Duncan Stuart.
James Robertſon.
Robert Mac Colie.
Alexander Mac Pherſon.
Alex. Stuart.
John Macdonald.
Angas Mac Pherſon.
Hugh Frazer.
Rorie Macdonald.
Duncan Mac Pherſon.
John Robertſon.
Alex. Maclean.
Alex. Mac Gillivray.
Alex. Mackintoſh.
James Mac Gillivray.
James Kinlin.

Donald Mackintoſh.
Donald Mac Gillivray.
John Mac Gillivray.
John Farquarſon.
Alex. Mac Queen.
Law. Mac Bean.
Evan Clark.
Alex. Mac Queen.
Alex. Mac Lean.
Duncan Mac Gillivray.
John Frazer.
Alex. Smith.
Evan Mac Gillivray.
Duncan Mackintoſh.
Alex. Mac Queen.
Law. Mac Gillivray.
John Mac Gillivray.
John Mac Gillivray.
James Mac Gillivray.
John Mackintoſh.
William Mac Bean.
Tho. Clark.
John Robertſon.
David Mac Queen.
John Mackintoſh.
Alex. Mac Bean.
Donald Read.
John Shaw.
Donald Mac Gillivray.

Executed at *Preſton*,

Major *John Nairne*,
Capt. *Phil. Lockhart*,
Capt. *John Shaftoe*,
Enſign *Erſkine*,
} Shot by Sentence of a Court Martial.

Richard Shuttleworth.
Roger Moncaster.
Tho. Cowpe.
William Butler.
William Ackwright.
Richard Chorley.
James Drummond.
William Black.
Donald Mackdonald.
Rorie Kennedy.
John Ord.
John Rowbotham.

Died in Prison at *Carlisle*,

John Forbes.

Executed at *Leverpoole*,

John Hunter,
Alex. Drummond,
George Collingwood, Esq.
Archibald Burnet,
} February 25. 17$\frac{13}{16}$.

Sent from thence to *Lancaster*, who were convicted and sentenced,

Charles Farley, jun.
Tho. Shaw.
James Mackinnon.
James Pleasington.
John Malcolm.
Donald Smith.
And. Davidson.
William Ferguson.
Patrick Smith.
And. Dall, alias *Dugall.*
Ja. Blackwood.
Tho. Forster.
Malcolm Steward.
Miles Beg.
John Bow.
John Mac Gregor.
John Steward.
John Mac Queen.
John Robertson.
Archibald Macklachlan.
Robert Stewart.
Christ. Carus.
John Stewart.
Archibald Menzies.
John Crowe.
Richard Willington.
Richard B[illegible]s,
Kenneth Mackenzie.
John Kennedy.
George Hodgson.
Alex. Stewart.

Exe-

Executed at *Garſtang*,

Joſ. Wadſworth,
Tho. Cartmell,
Tho. Gooſe,
Alan Sanderſon,
} 16*th of* February, 17[illegible]

Executed at *Mancheſter*,

Tho. Syddal.
Will. Harvey.
Stephen Segar.
Joſ. Porter.
John Finch.

Executed at *Wigan*,

James Blundel.
James Burnes.
James Finch.
William Whalley.
John Mac Gilliveray.

Executed in *Scotland* Two

There were Tranſported from *Leve*
ſeveral Colonies in the *Weſt Indies*, toge
thoſe mentioned before to be ſent
Lancaſter, to the Number of 6
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THE King having already shewed His Royal Inclination to Mercy, by many particular Instances of Grace, extended to such as had rendred themselves Obnoxious to the Laws, by being concerned in the late unnatural Rebellion, that nothing may be wanting in His Majesty to Quiet the Minds of all his Subjects, hath therefore, upon mature Deliberation, Resolved and Determined to Grant His General and Free Pardon in a Large and Bountiful manner; And however it may be Received by those who are Obstinately bent on the Ruin of their Country, His Majesty promises Himself, that it will Raise a due Sense of Gratitude in all such as have been Artfully Misled into Treasonable Practices against His Person and Government, and Preserve them and others from standing in need of the like Mercy for the future, when such an Instance of Clemency may not be so expedient for the Publick Welfare, as it would be agreeable to His Majesty's Inclinations: And therefore His Majesty is well Pleased and Contented that it be Enacted by the Authority of this present Parliament; That all and every His Majesty's Subjects, of this His Majesty's Realm of *Great Britain*, their Heirs, Successors, Executors, and Administrators, shall be, by the Authority of this present Parliament, Acquitted, Pardoned, Released, and Discharged against the King's Majesty, His Heirs and Successors, and every of them, of

and

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and from all and all manner of Treasons, Misprisions of Treasons, Felonies, Treasonable and Seditious Words or Libels, Leasing-Making, Misprisions of Felony, Seditious and unlawful Meetings and Conventicles, and all Offences whereby any Person may be charged with the Danger and Penalty of *Præmunire*; and also of and from all Riots, Routs, Offences, Contempts, Trespasses, Entries, Wrongs, Deceipts, Misdemeanors, Forfeitures, Penalties, and Sums of Money, Pains of Death, Pains Corporal, and Pains Pecuniary; and generally of and from all other Things, Causes, Quarrels, Suits, Judgments, and Executions, in this present Act hereafter not Excepted or Foreprized, which have been had, made, done, committed, omitted, perpetrated, incurred, or forfeited, before and unto the Sixth Day of *May*, 1717.

And the King doth Grant and Freely Give to every of his Subjects, all Goods, Chattels, Debts, Fines, Issues, Profits, Amerciaments, Forfeitures, and Sums of Money, by any of them Forfeited, which to His Majesty do or shall Appertain, by reason of any Offence, Contempt, Trespass, Entry, Misdemeanor, Matter, Cause, or Quarrel, Suffered, Done, or Committed by them, or any of them, before the said Sixth Day of *May*, 1717. not hereafter Excepted.

Provided nevertheless, That all Grants thereof, or of any Part thereof, made by any such as have so Forfeited the same, and are hereby Restored, as aforesaid, and all Executions thereof, or of any Part thereof, had against any such, after such Forfeiture thereof committed or made, shall be of such Force and Effect as if no such Forfeiture had been had or made,

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and of no other: the ſame Forfeiture or any thing in this Act before to the contrary notwithſtanding.

That every Perſon may plead this Act of Free Pardon for his or their Diſcharge, without any Fee, but only Sixteen Pence to the Clerk or Officer that ſhall Enter ſuch Plea or Matter for Judgment or the Parties Diſcharge in that Behalf.

That this His Majeſty's Free Pardon ſhall be Allowed, and Taken, in all Courts of His Majeſty, and elſewhere, in all things not in this preſent Act excepted, without any Ambiguity, Queſtion, or other Delay whatſoever.

Excepted and Foreprized out of this Act of General and Free Pardon all ſuch Perſons who are, on the ſaid Sixth Day of *May*, in the Year of our Lord, 1717, any ways imployed by, or in the Service of the Perſon, who ſince the Death of the late King *James*, hath Taken upon himſelf the Stile and Title of King of *England*, or King of *Great Britain*.

And alſo Excepted out of this Pardon all Offences committed by any Perſon or Perſons, of Levying the War againſt His Majeſty, which began in this Realm in the Year of our Lord 1715, who have been ſince beyond the Seas, and have, before the ſaid 6 Day of *May*, Returned into the Kingdoms of *Great Britain* or *Ireland*, without His Majeſty's Licence, or ſhall, on or after the ſaid 6 Day of *May*, Return into either of the ſaid Kingdoms without ſuch Licence, as aforeſaid.

Alſo all Treaſons committed contrary to an Act of Parliament made in the 34 Year of the Reign of Her late Majeſty Queen *Anne*, Intituled,

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tuled, *An Act to Prevent all Traiterous Correspondence with Her Majesty's Enemies.*

Also all Violations of the Privileges of Ambassadors, and other Publick Ministers of Foreign Princes and States.

Also all manner of Voluntary Murthers, Petty Treasons, Wilful Poysonings, and all Slaughters of Forethought-Felony, all Wilful Burning of Houses, or Stacks of Corn, or Barns with Corn in them at the time of such Burning, and all and every the Accessaries to the same Offences, or any of them.

Also all Piracies and Robberies upon the High Seas, or abetting any such Offenders, and the comforting and receiving of them.

Also all Offences in Deserting His Majesty's Service in the Army, other than of such Offenders, who shall, on or before the Tenth Day of *September* next, return to His Majesty's Service, in the Regiment, Troop, or Company, to which they did belong.

Also all Offences of Levying War against His Majesty, High Treason, or Unlawful Correspondence with His Majesty's Enemies, committed since His Majesty's Accession to the Throne, until the said 6 Day of *May*, by any Person or Persons then having any Military Commission from and under His Majesty.

Also all Burglaries, and all Robberies of Churches, and Stealing any Plate, Utensils or Goods belonging to the same; and also all Robberies committed in or near the High-way.

Also the detestable and abominable Vices of Sodomy and Buggery. Also Excepted all Rapes and Carnal Ravishments of Women.

Also all Offences of Perjury and Subornation of Witnesses, and the Offences of Forging

or Counterfeiting, and Sollicitation of Forgin or Counterfeiting any Fines, or other Records Deeds, Wills, Escripts, or Writings whatsoever.

And also Excepted all Offences of Forging and Counterfeiting of the Bills of Credit, commonly called *Exchequer* Bills, and the Tendring in Payment any such Forged or Counterfeited Bill of Credit, or Demanding Money thereupon at the *Exchequer* or elsewhere, (knowing the Bill so Tendred, or whereupon the Money shall be so Demanded, to be actually Forged and Counterfeited) and with an Intention to Defraud His Majesty, or any other Person or Persons whatsoever; and also all Offences of Forging and Counterfeiting the Common Seal of the Corporation of the Governour and Company of the Bank of *England*, or of any Sealed Bank Bill, Made or Given out in the Name of the said Governour and Company, for the Payment of any Sum of Money, or of any Bank Note whatsoever, Signed for the said Governour and Company of the Bank of *England*, or the Altering and Razing any Indorsement, or any Bank Bill or Note of any sort.

Also Excepted the Offences of Forging and Counterfeiting Seamens Tickets, or Authorities for Receiving any Sums of Money due to Seamen, and the Offences of Publishing as true ones Forged or Counterfeit Tickets, knowing them to be Forged or Counterfeit.

Also all Offences committed or done since His Majesty's Happy Accession to the Crown, contrary to or against an Act of Parliament made in the 25 Year of the Reign of King *Charles* the Second, Intituled, *An Act for Preventing Dangers which may happen from Popish Recusants*; or contrary to, or against an Act of Parliament made in the 30 Year of the Reign

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Reign of the ſaid King *Charles* the Second, Intituled, *An Act for the more effectual Preſerving the King's Perſon and Government, by Diſabling Papiſts from Sitting in either Houſe of Parliament.*

Alſo all Offences done or committed ſince His Majeſty's Happy Acceſſion to the Crown, contrary to an Act of Parliament made in the 13*th* Year of the Reign of His late Majeſty King *William* the Third, Intituled, *An Act for the further Security of His Majeſty's Perſon*, &c. Or contrary to an Act of Parliament made in the Firſt Year of the Reign of Her late Majeſty Queen *Anne*, Intituled, *An Act to declare the Alterations in the Oath Appointed to be taken by the Act, Intituled, An Act for the further Security of His Majeſty's Perſon*; or contrary to or againſt an Act of Parliament made in the Firſt Year of the Reign of His preſent Majeſty, Intituled, *An Act for the further Security of His Majeſty's Perſon and Government*, &c.

Alſo Excepted all other Offences, Contempts, and Miſdemeanors, committed or done contrary to the Laws of this Realm, for which any Perſon hath been or ſhall be ſo far proſecuted, that on or before the 15*th* Day of *July*, 1717. any Verdict hath been or ſhall be obtained upon ſuch Proſecution, or any Outlawry, Conviction, Judgment by Default, or other Judgment, Sentence, or Decree, had, given or entred in any of His Majeſty's Courts, or before any Commiſſioners of His Majeſty within this Realm of *Great Britain*, or by His Majeſty's Commiſſioners for the Management of His Receipt of Exciſe, or other Duties under their Management, or by His ſaid Majeſty's Juſtices of the Peace, upon any Proſecution before ſuch Commiſſioners of Exciſe, or Juſtices of the Peace reſpectively, relating to the ſaid Exciſe,

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or other Duties, or any of them; subject to the Clause herein after contained, for the Pardoning the Imprisonment and Execution of certain Persons, who be and remain Attainted for High-Treason on the Fifth Day of *May*, 1717. Nevertheless none of such Offences, Contempts, or Misdemeanors (not being Capital) shall be pardoned by this Act, but are hereby Excepted thereout, wherof or for which any Action, Bill, Plaint, Information, Indictment, or other Prosecution at any Time within Two Years next before the last Day of *Trinity* Term, 1717. hath been or shall be found, Commenced or Sued in any of His Majesty's Courts at *Westminster*, or before any Commissioners of *Oyer* and *Terminer*, Goal Delivery, or Justices of Assize, and on the said last Day of the said Term shall be depending and remaining to be Prosecuted, although no Outlawry, Verdict, Conviction, Judgment, or Decree, shall, on the said 24th Day of *July*, be had or obtained on the same, and which have been Prosecuted at the Charge of any private Person or Persons, unless the Defendant or Defendants in such Prosecution or Prosecutions shall pay to such private Prosecutor or Prosecutors, his or their Executors or Administrators, such Costs as the Court where or before whom such Prosecution shall be, shall Award to be paid to such private Prosecutor or Prosecutors in respect of the Charges of such Prosecution.

Provided also, That if any Person shall have Committed High-Treason in Levying War against His Majesty in the Rebellion which began in the Year of our Lord, 1715. within this Realm, who, at the time of such Treason committed, or since, was Possessed of, or Entitled

tled to any Civil Office for Life, or for any Eſtate of Inheritance within this Realm, and ſhall claim to have and enjoy ſuch Office, Place, or Imployment; It ſhall and may be Lawful to proceed in due form of Law againſt ſuch Perſon for the ſaid High-Treaſon, as if this Act had not been made.

Excepted alſo all Perſons of the Name and Clan of *Mac-Gregour*, mentioned in an Act of Parliament made in *Scotland*, in the Firſt Parliament of the late King *Charles* the Firſt, Intituled, *Anent the* Clan-Gregour, *whatever Name or Deſignation he or they may have, or do aſſume, or commonly paſs under.*

Alſo all Offences concerning any Common Highways or Bridges, and all Offences in Taking away, or Imbezelling Naval Stores, or Habiliments of War, on or ſince the Sixth Day of *May*, 1715. All Offences, Misbehaviors, Miſdemeanors, or Omiſſions, committed, ſuffered or done by any Officer of the Exchequer or Revenue, and all Actions of *Quare Impedit*; All Inceſt, Simony, or Dilapidations, and all Proceedings and Sentences thereupon.

All Firſt-Fruits and Tenths, Penſions, and other Payments out of any Eccleſiaſtical Promotion or Benefice, and Arrears of the ſame.

All Sums of Money and Duties accruing or ariſing by or from any Cuſtoms, Subſidies, Exciſe, Impoſition upon Wine, or other Liquors or Commodities, Duties upon Malt, Hops, Candles, Sope, Paper, Duties on Printing, Painting, Staining, or Dying Silks, Callicoes, Linens, and Stuffs, Duties on Starch, Duties on Gilt or Silver Wire, Duties on Salt, Duties upon Tonnage of Ships, Duties upon Parchment, Vellum and Paper, Arrears of any Land-Tax, Poll-Money, all Arrears

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of Rent, and all other Sums of Money due or owing from any Licenſed or Hackney or Stage-Coachmen, Duties ariſing by Wine Licences, or the Poſt-Office, or by or from any other Tax, Aſſeſſment, Duty, Impoſition, Debt, or Sum of Money whatſoever to the King given, or belonging, or leviable by any Act of Parliament, or otherwiſe due or belonging to the King, and all Arrears thereof reſpectively, and all Corruptions and Miſdemeanors of any Officer or Miniſter, of, in, or concerning the ſame, and all Accounts and Suits whatſoever, and all Concealments, Frauds and Offences, by which His Majeſty or the late Queen hath or have been Deceived, and not truly Anſwered for the ſame, or any of them.

Alſo all Offences, Penalties, and Forfeitures relating to the Exportation of any Wool, or the Importation of Brandy from Foreign Parts beyond the Seas in any Veſſel or Cask which ſhall not contain Sixty Gallons at the leaſt, and all Proſecutions for the ſame. All Offences committed by any Perſon or Perſons in taking or converting to their own Uſe any Goods, Chattels, Rents, or Profits of Land belonging to the Crown by any Title or Pretence whatſoever. All Arrears of Rent due from any Farmer or Tackſman of any Part of the Publick Revenue, and all Arrears of Fee-Farm Rents, and other Rents. All Accounts of Collectors, or other Officers, who have Received or Collected, or are any other way Accountable to His Majeſty for any the Cuſtoms, Subſidies, or other Matters before mentioned, or for Prize Goods, or for any other Tax, Aſſeſſment, Duty, Impoſition, *&c.*

Alſo all Recognizances, Obligations, and other Securities, Given or Entred into by any Receiver of any Land-Tax or any other Duties, or other Sums

Sums of Money whatsoever, Due or Payable to His Majesty.

This Act shall not extend to give or restore any Ability or Capacity to take, have, hold, or exercise any Office, Place, or Employment, Ecclesiastical, Civil, or Military, to any Person or Persons, who, by virtue or reason of any Act or Law whatsoever, were or are made or become incapable or disabled so to do.

Also Excepted all such Persons as on the Fifth Day of *May*, 1717. remain Attainted for any High-Treason, and all Executions and Forfeitures therefore: Nevertheless all such of the said Persons so Attainted for High-Treason in any manner, (other than by or under any Act of Parliament wherein they are specially named, which Persons so Attainted by or under any Act of Parliament wherein they are specially named, are not intended to be pardoned in any Degree) who have not escaped out of Prison, shall be, and are hereby freely Pardoned and Discharged of and from Imprisonment and Execution of their Persons on such Attainders.

Also Excepted all Contempts or Wilful Disobedience in not appearing of any Person or Persons, according as he or they were Appointed to do by Letters Issued in pursuance of an Act of Parliament made in the First Year of the Reign of His present Majesty, Intituled, *An Act for Encouraging all Superiors, Vassals, Landlords, and Tenants in* Scotland, *&c.* and the Penalties or Forfeitures of Single and Life Rent Escheat incurred thereby: Nevertheless, the Sum of 500 *l.* and the Years Imprisonment mentioned in the said Act for such Offence, are hereby Pardoned and Remitted.

Also Excepted all such Persons, who being in actual

actual Custody, have desired to be Transported into any of His Majesty's Plantations, or other Parts beyond the Seas.

Also all Offences committed by any Jesuit, Seminary, or other *Romish* Priest whatsoever, contrary to the Tenor or Effect of the Statute made in the 27*th* Year of the Reign of the late Queen *Elizabeth*, Intituled, *An Act against Jesuits, Seminary Priests, and other such like Disobedient Persons*; and all Outlawries, Proceedings, Judgments, and Executions for the same Offences; and all Convictions of *Popish* Recusants for their Recusancy, and the Consequences thereof; and all Forfeitures of Estates, Real and Personal, given for Supporting Superstitious Uses, mentioned in an Act of the First Year of the Reign of His present Majesty, Intituled, *An Act for Appointing Commissioners to Enquire of the Estates of certain Traitors*, &c. All Offences contrary to an Act of Parliament made in the First Year of the Reign of His present Majesty, Intituled, *An Act to Oblige Papists to Register their Names and Real Estates.*

Also Excepted all Contempts in Causes Depending on or before the last Day of *Trinity* Term, 1717. in any Court of Law or Equity, or for Non-Performance of Awards, or for Non-Payment of Costs. Also all Contempts in any Ecclesiastical Court, in such Causes only that have been commenced for Matters of Right, and not for Correction; and also all Contempts in any Court of Admiralty, Proceeding civilly, and not Criminally.

And also Excepted all such Person and Persons who have been Impeached in Parliament before the said Sixth Day of *May*, 1717. whose Impeachments on the 15*th* Day of *July*, 1717. remain Undetermined. And

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And alſo Excepted out of this Pardon *Robert* Earl of *Oxford* and Earl *Mortimer*, *Simon* Lord *Harcourt*, *Matthew Prior*, *Thomas Harley*, *Arthur Moor*, *James Duke Criſpe*, *Butler Nodes*, *Daniel Obryan*, *William Rednayne*, and *Robert Thomſon* late Factor to the Viſcount of *Arbuthnot*.

Provided alſo, That this Act ſhall not extend to Diſcharge *Robert Blackburn*, and others, mentioned in an Act of Parliament made in the Firſt Year of His preſent Majeſty's Reign, Intituled, *An Act for Continuing the Impriſonment of* Robert Blackburn, *and others, for the horrid Conſpiracy to Aſſaſſinate the Perſon of His late Sacred Majeſty King* William *the Third*; and that the ſaid *Robert Blackburn*, and the other Perſons in the ſaid Act particularly Named, may be Detained and Kept in Cuſtody without Bail or Mainprize, during His Majeſty's Pleaſure.

And it is further Enacted by the Authority aforeſaid, That every Perſon or Perſons hereby pardoned, may plead the General Iſſue without ſpecial pleading of this Pardon, and give this Act of Pardon in Evidence for his Diſcharge; and that the ſame ſhall be thereupon allowed, and Advantage thereof had, as fully to all Intents and Purpoſes, as if the ſame had been fully and well pleaded.

F I N I S.

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